



Basutoland,  
The Bechuanaland Protectorate  
and Swaziland

HISTORY OF DISCUSSIONS  
WITH THE  
UNION OF SOUTH AFRICA  
1909—1939

*Presented by the Secretary of State for Commonwealth Relations to Parliament  
by Command of Her Majesty  
December 1952*

LONDON  
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## PREFACE

1. The Colony of Basutoland and the Bechuanaland and Swaziland Protectorates are administered on behalf of Her Majesty's Government in the United Kingdom by a High Commissioner. Geographically Basutoland is entirely, and Bechuanaland and Swaziland very nearly, surrounded by the Union of South Africa and its territories. Economically the relationship between the High Commission Territories and the Union of South Africa is very close.

2. Basutoland was declared British territory and placed under the administration of the High Commissioner for South Africa, as he was then styled, in 1868, at the request of Moshesh, the founder of the present line of Basuto chiefs, whose object was to secure protection for his people. In 1871 it was annexed to the Colony of the Cape of Good Hope but after thirteen rather troubled years culminating in a rising, it was returned at the request of the Cape Colony to the administration of the United Kingdom Government acting through the High Commissioner.

3. Bechuanaland was made a Protectorate in very similar circumstances in 1885. The chief primarily responsible was Khama III, actuated by the same motive as Moshesh. In 1891 it was formally brought under the administration of the High Commissioner.

4. Swaziland remained nominally independent until 1890, when the whole-sale grant of overlapping concessions by the then Paramount Chief made necessary some form of European Control. From 1890 to 1894, the United Kingdom and Transvaal Governments established a form of condominium which was replaced in 1894 by an arrangement under which the Government of the Transvaal Republic was given powers of protection and administration without actual incorporation. In 1906 the administration of Swaziland was transferred to the High Commissioner.

5. The various Orders in Council establishing the United Kingdom's administration of the three Territories are reproduced on pages 103-111.

### The South Africa Act, 1909

6. In 1909 when the constitution of the Union of South Africa was being drawn up, the native inhabitants of all three Territories asked that they should not be included in the proposed Union. Assurances were given them that no immediate change in their administration was contemplated, but provision for the possible eventual transfer of the administration of the Territories to the Union was made in the South Africa Act, 1909. Section 151 of that Act empowers the King in Council\* on addresses from both Houses of the Union Parliament, to transfer the administration of these Territories to the Union of South Africa, subject to certain conditions designed for the protection of native rights and interests and embodied in the Schedule to the Act. (Section 151 of the Act and the Schedule are printed on pages 118-120.)

7. It is relevant to recall that the South Africa Act, which established the Union, was prepared in South Africa by a National Convention of the four Colonies. While the provisions relating to the High Commission Territories (Section 151 and the Schedule) were framed to meet the United Kingdom Government's view of its obligations towards the native inhabitants

\* The King in Council (i.e. the Privy Council which is a formal body) acts on the advice of the responsible United Kingdom Ministers. (See also Mr. Asquith's comment on this point during his speech on 16th August, 1909—page 115 below.)



of these Territories, these provisions were adopted by the National Convention and included in the first draft of the Bill forwarded to the High Commissioner by the President of the Convention (page 112). In this draft\* the provisions relating to the High Commission Territories were embodied virtually in the form in which they were later enacted. Article 151 and Sections 20 and 25 of the Schedule reserving powers of disallowance in fact remained unchanged throughout the subsequent transactions.†

8. When the South Africa Bill was before the United Kingdom Parliament pledges were given by the United Kingdom Government that Parliament should have the fullest opportunity of discussing and, if they wished, disapproving any proposed transfer of these Territories and also that the wishes of the inhabitants would be ascertained and considered before any transfer took place. (Extracts from Ministers' speeches during the debates on the South Africa Bill are printed on pages 115-117.) These pledges have since been repeatedly reaffirmed by or on behalf of successive Secretaries of State and an explicit undertaking has also been given that Her Majesty's Government in the United Kingdom will not support in the House of Commons or elsewhere any proposal for transfer if it involves the impairment of the safeguards of native rights and interests which the Schedule to the South Africa Act was designed to secure. (See the statement made by the Secretary of State for the Colonies to a deputation of Swazi Chiefs on the 31st January, 1923 : page 125 below.)

#### **Alterations in arrangements for administration of Territories**

9. Since the passing of the South Africa Act there have been two modifications in the arrangements for the administration of these Territories. Up to 1930 the Offices of Governor General of the Union and High Commissioner for South Africa were held jointly. As the Governor General had by then become solely the Representative of His Majesty in the Union, and the advice on which His Majesty acted in making the appointment was that of His Majesty's Ministers in the Union, it was considered impracticable that the Governor General should continue to be responsible to the United Kingdom Government for the administration of Basutoland, the Bechuanaland Protectorate and Swaziland. These Offices were accordingly separated. Later at the instance of the Union Government in 1934 the title of the High Commissioner for South Africa was altered to High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland.

#### **Discussions between Governments**

10. Since the passage of the South Africa Act in 1909 the question of the transfer of the Territories has been raised informally by the Union Government on a number of occasions.

11. 1913. In 1913 General Botha intimated that he considered that the Union must press for the transfer of Swaziland and the Bechuanaland Protectorate. General Botha was informed that, while the transfer of Swaziland might be considered, it would be impossible at that time to justify to the United Kingdom Parliament the transfer of the Bechuanaland Protectorate. (Pages 12-13.) Owing to the war the matter was not pursued.

\* Published as Command Paper 4525 of 1909.

† The draft Bill was debated by the Parliaments of the four Colonies, and their amendments went before a final meeting of the National Convention which issued its report on 11th May, 1909. This Second Report of the National Convention, embodying the final draft Bill, was forwarded to the Secretary of State by the High Commissioner on 17th May, 1909, and was published in the United Kingdom as a White Paper (see pp. 112-114 below). The Parliaments of the four Colonies adopted the final draft, without further amendment, during June, 1909.

12. 1919. In 1919, Generals Botha and Smuts, while in England, represented to the Secretary of State for the Colonies (Lord Milner) that the time had come to transfer Swaziland to the Union. (Page 13.) Lord Milner was prepared to consider this, but on the return of the two Ministers to the Union the matter was again allowed to drop.

13. 1924. In 1924 General Hertzog, in a letter to the High Commissioner reopened the question of the transfer of the Bechuanaland Protectorate and Swaziland (Page 15). Shortly afterwards General Hertzog stated publicly that he felt the time had arrived "for considering the incorporation of Bechuanaland, also Swaziland, in the Union", and that he was seeking the views of the United Kingdom Government. (Page 16.) This statement led to considerable comment and questions were asked in the United Kingdom Parliament. In subsequent discussions with the High Commissioner, General Hertzog stated that, in saying the time was ripe for transfer, he was only expressing his personal views. He agreed to the publication of a statement making this clear and adding that the Union Government did not intend to press for transfer at present. (1925.) (Page 16.) Later in a statement in the Union Parliament on 25th March, 1925, General Hertzog said he was not prepared to press for the incorporation of the Bechuanaland Protectorate and Swaziland in the Union unless "the people—natives as well as Europeans—are prepared and desire to come in". (Page 16.) (This statement was subsequently referred to in the Aide Mémoire of 1935. See paragraph 20 below, and page 53.)

14. 1926. The views of the United Kingdom Government were elaborated in December, 1925, in a despatch from the Secretary of State for Dominions Affairs (Mr. L. S. Amery) to the High Commissioner, of which a copy was subsequently (21st January, 1926) given to General Hertzog. (Pages 17-23.) At that time a series of four important Bills dealing with various aspects of Native Policy in the Union were about to be introduced by General Hertzog in the Union Parliament and the Secretary of State suggested that the time would not be opportune for further pursuit of the transfer question until after these Bills had been dealt with. There followed an exchange of letters between the Union Prime Minister and the High Commissioner, in which General Hertzog accepted the Secretary of State's contention and at the same time set out the Union Government's views in some detail. (Pages 23-36.)

15. 1927. In 1927, during a visit to South Africa, Mr. Amery told General Hertzog that there would be no chance of securing the consent of the House of Commons in the United Kingdom to transfer of any of the Territories in the near future and that it would be advisable to allow the whole question to drop for the present. General Hertzog acquiesced. (Page 36.)

16. 1930. In 1930 during a visit to the United Kingdom General Hertzog made no endeavour to press for the immediate transfer of the Territories, but asked the Secretary of State (Mr. J. H. Thomas) to keep an open mind on the transfer of Swaziland at some future date, which Mr. Thomas promised to do.

17. 1932. In 1932 Mr. Havenga, the Union Minister of Finance, took the opportunity of the Ottawa Conference to discuss the question of transfer with Mr. Thomas. Later in the same year General Hertzog wrote to Mr. Thomas referring to the Ottawa conversations and stating that the matter was "becoming daily more pressing for a settlement". (Page 38.)

18. 1933. In 1933 General Smuts and Mr. Havenga when in London called on the Secretary of State to discuss the matter. They were given a memorandum drawing attention to the United Kingdom Government's



pledge to consult the inhabitants of the Territories and the United Kingdom Parliament, and raising certain questions about the effect of the passage of the Statute of Westminster on the safeguards intended to be provided by the Schedule to the South Africa Act. (This memorandum was subsequently reproduced as part of the 1935 Aide Mémoire—see pages 53-57.) General Smuts and Mr. Havenga later sent to the Secretary of State a memorandum explaining the grounds, economic and other, on which the Union Government considered the Territories ought to be transferred to the Union. (Page 39.) In reply Mr. Thomas pointed out that this memorandum did not touch on the points raised in the United Kingdom memorandum. He also drew attention to statements which had been made a few days previously in the House of Lords and the House of Commons reaffirming the pledges given by previous United Kingdom Governments. (Page 42.) Later General Hertzog again wrote personally to Mr. Thomas, referring to the London discussions with General Smuts and Mr. Havenga and repeating the view that the time had come for the Union to take over the Territories, but making no reference to the points raised in the memorandum given to General Smuts. (Page 44.) Mr. Thomas replied that His Majesty's Government in the United Kingdom felt that the present was not a suitable time for raising the question with the native populations of the Territories. (Page 45.)

19. 1934. In 1934 General Hertzog wrote to the Secretary of State expressing disappointment with the Secretary of State's reply to his representations and stating the grounds, economic and other, on which he considered that continuance of the existing situation would be detrimental to the interests both of the Union and the Territories. (Page 46.) In his reply, after dealing with these grounds, Mr. Thomas associated himself and the United Kingdom Government with the terms of the despatch (pages 18-20) which his predecessor (Mr. Amery) had written in 1925 and which referred to General Hertzog's own declarations in the Union Parliament on 25th March, 1925, that he did not wish the transfer of the Territories to take place unless the inhabitants "are prepared and desire to come in". Mr. Thomas pointed out that all his information went to show that the result of consultation with the inhabitants of the Territories, at least so far as the natives were concerned, would be unlikely to be in favour of transfer; such a situation would be embarrassing and undesirable; on these grounds His Majesty's Government in the United Kingdom adhered to the view that this was not an opportune moment for raising the question, but they would welcome the closest association and co-operation between the Union Government and the Administrations of the Territories, particularly on economic questions. (Pages 49-53.)

20. 1935. In 1935 General Hertzog had lengthy discussions with Mr. Thomas in London. It was agreed that the policy of the Union and the United Kingdom Governments for the next few years should be directed to bringing about a situation in which, if transfer were to become a matter of practical politics, it could be effected with the full acquiescence of the populations concerned. It was regarded as an essential condition of the success of such a policy that the native populations of the Territories should feel that the Union Government were working in concert with the local Administrations with a real and generous desire to develop and improve conditions in the Territories and that for that purpose the Governments concerned should consider jointly what practical steps could be taken for promoting co-operation between the Union Government and the Administrations of the Territories. The terms of this agreement were embodied in an Aide Mémoire handed to General Hertzog by Mr. Thomas on 15th May,

1935, and subsequently published as a White Paper (Cmd. 4948 of July, 1935). (Page 53.) The Aide Mémoire also recited the terms of the pledges by which His Majesty's Government in the United Kingdom was bound, and dealt with the altered constitutional position resulting from the Statute of Westminster.

21. 1936. The means of carrying out most effectively the Aide Mémoire policy of co-operation were subsequently discussed. The Union Government offered to share the cost of certain development measures in the Territories and Resident Commissioners were instructed to explain this proposal to the inhabitants and to seek their co-operation. (Pages 63-65.)

22. Considerable uneasiness was caused among native inhabitants of the Territories by a statement by General Hertzog in a debate in the Union Parliament on the 16th June, 1936, which gave the impression that he expected transfer to begin in two years. (Page 65.) Although it was afterwards explained that this statement was an expression of General Hertzog's personal hope that a position would be created within a few years which would permit transfer with the good-will of the inhabitants, it was subsequently agreed in correspondence between General Hertzog and the Secretary of State (Mr. Malcolm MacDonald) that the proposals for financial assistance by the Union Government should remain in abeyance. (Pages 67-69.)

23. 1937. In 1937 General Hertzog had further discussions with Mr. MacDonald in London. On his return to the Union he made a statement at Bloemfontein on 6th July, 1937, in which he expressed dissatisfaction with the position and stated that it was inconceivable to him that there should be much further delay in transfer of the Territories. (Page 70.) Mr. MacDonald stated in the House of Commons on the 10th July that during the discussions in London General Hertzog had pressed for transfer to begin in the near future. He had explained to General Hertzog that the situation described in the Aide Mémoire of 1935 had not yet greatly altered, that the United Kingdom Government adhered without any qualification to the terms of the agreement which had been reached in 1935, and that he would undertake to consider carefully what further steps were practicable to implement that policy. (Page 71.) Mr. MacDonald made a further statement on the 28th July, 1937, about the issues involved in transfer. (Page 73.) The text of correspondence which followed is reproduced on pages 75-88.

24. 1938. The substance of this correspondence was made public in statements by the Secretary of State and General Hertzog on the 29th March, 1938. (Page 89.) These statements envisaged two steps:—

- (a) the establishment of a standing Joint Advisory Conference, consisting of the three Resident Commissioners and three Officers of the Union Government, to study openings for co-operation between the Union Government and the Administrations of the Territories in matters affecting the development of the Territories, and to consider matters of joint concern;
- (b) the preparation by the Union Government of a memorandum setting forth the terms on which they would propose that the transfer of the administration of the Territories should take place if decided upon.

25. 1939. In 1939 the Joint Advisory Conference presented a first report to the High Commissioner and to the Union Government. The report which dealt mainly with economic matters (but made no substantial recommendations) is printed on pages 90-98.



26. There was considerable informal discussion and correspondence between the High Commissioner and the Union authorities regarding the form of the memorandum to be issued by the Union Government. Responsibility for the contents of the memorandum rested solely with the Union Government, but the intention was that the High Commissioner should arrange for its presentation by Resident Commissioners to native inhabitants in the Territories. The Union Government's memorandum is printed on pages 100-102.

27. With the outbreak of war in September, 1939, it was agreed that publication of the memorandum and of the report of the Joint Advisory Conference should be deferred and that the question of transfer should remain in abeyance for the time being.

#### **Southern Rhodesia and the Northern Bechuanaland Protectorate**

28. The present White Paper is concerned primarily with past discussions between the United Kingdom and Union Governments. But it must also be recorded that, on several occasions since Southern Rhodesia attained self-governing status in 1923, the Southern Rhodesia Government has approached the United Kingdom Government about its claim to at least a part of the Northern Bechuanaland Protectorate. The United Kingdom Government has undertaken that, when occasion arose, the views of the Southern Rhodesia Government would be given due consideration. The relevant correspondence is printed on pages 127-129.

#### **Altered constitutional position**

29. The Appendix to the Aide Mémoire of 1935 (page 56) referred to the effect on the transfer question of constitutional changes which have taken place since the passage of the South Africa Act in 1909.

30. In enacting Section 151 of the South Africa Act, the United Kingdom Parliament clearly regarded compliance with the provisions of the Schedule to the Act as fundamental to its consent to transfer. The Schedule (page 118) embodied certain principles and safeguards to native rights. Paragraph 20 reserved to The King the right to disallow any legislation relating to a transferred territory, and similarly paragraph 25 required any Bill of the Union Parliament which sought to amend or alter the Schedule to be reserved for the signification of His Majesty's pleasure. At the time when the Act was passed, these safeguards were exercisable by The King on the advice of His Ministers in the United Kingdom; and thus in effect they were safeguards operable by the United Kingdom Government. Section 151 of the Act and the Schedule are still in force, but since the passage of the Statute of Westminster in 1931 the Parliament of the Union of South Africa is completely free to amend the Schedule as it wishes, notwithstanding paragraph 25. Thus the whole constitutional position, against the background of which Section 151 is enacted, has changed and the effect of the safeguards, as originally framed, radically altered.

31. The change in the status of Commonwealth countries since the passage of the South Africa Act has also altered the constitutional procedure which would govern the process of transfer. In 1909 The King was advised in all matters, including Dominion affairs, by His United Kingdom Ministers and thus the effect of Section 151 of the South Africa Act was that the decision rested with the United Kingdom Government alone. But the passage of the Statute of Westminster (see Appendix VIII) has altered the

position. The Queen now acts on the advice of the appropriate Commonwealth Ministers in matters affecting Commonwealth countries. Transfer of the administration of the High Commission Territories would now involve something of the nature of a conveyance from Her Majesty's Government in the United Kingdom to Her Majesty's Government in the Union of South Africa and would require not only acceptance by the Union but also relinquishment of authority by the United Kingdom. As regards the latter The Queen would be advised by her United Kingdom Ministers. Equally she would be advised by her South African Ministers in so far as that part of the transaction was concerned which would be carried out by the Union Government, that is to say, the acceptance of the Territories and assumption of authority over them.



**PART I:—Discussions with the Union of South Africa**

1913-1919

**1913—1939****1913****1. Letter from General Botha to the High Commissioner (Lord Gladstone)***12th March, 1913.*

My dear Lord Gladstone,

I beg to offer you my sincere apologies at not having replied earlier to your letter of the 3rd instant, but I have been so occupied with other matters, that it was difficult indeed to give my attention to this question.

You have correctly understood the meaning of my recent statement in the Assembly in connection with the Protectorates. As you say, I was speaking on the general question of Native Policy and not on that of the eventual incorporation of the Protectorates, and all that I intended to convey was that the proposals which I contemplated submitting to Parliament, would only be in the nature of a first step and were not to be looked upon in any way as an attempt at a final solution of the problem, and that I did not think it would be practicable for the Government to grapple with the whole problem until such time as all the Protectorates would be incorporated into the Union.

At the same time I must confess that I rather welcomed the opportunity of making some reference to the ultimate incorporation of the Protectorates in view of Sir Starr Jameson's statement in London, on the 27th ultimo, at the Annual Meeting of the Chartered Company, in connection with the development in Bechuanaland.

We were considerably surprised to hear of the representations which have evidently been made from time to time by the Chartered Company in respect to Bechuanaland.

It is not clear whether Sir Starr had in view the political incorporation of Bechuanaland into Rhodesia, or merely a certain measure of economical development by the Chartered Company of this Protectorate, but in either case this is an ambition which the Government of the Union could not agree to encourage at all.

There is, of course, no question that it was contemplated at the time of Union that all the Protectorates, sooner or later, would be transferred to the Union, and I think it should be made clear to the Chartered Company that the Union Government would offer strenuous opposition to any such transfer of Bechuanaland, or of the development of that Protectorate by the Chartered Company.

The representations in regard to Bechuanaland which the Chartered Company have already made, and according to Sir Starr, intend to renew at some future date, have caused suspicion in the Union as to the destination of that Protectorate, and in view thereof, I feel that we must modify our attitude as conveyed to you in former correspondence and conversations.

I consider that we must now press for the transfer, at the earliest possible date, of Swaziland and at the same time of Bechuanaland.

Should the simultaneous transfer of both these Protectorates not be feasible in the opinion of the Imperial Government, then we urge that Bechuanaland also be transferred as soon as possible after the incorporation of Swaziland has been settled.

In regard to Basutoland the position remains unchanged.

Believe me,

Yours very sincerely,

LOUIS BOTHA.

**2. Extracts from a despatch from the Secretary of State (Mr. L. Harcourt) to the High Commissioner, 2nd May, 1913**

"I request that you will take an early opportunity of explaining to General Botha that His Majesty's Government could not in present circumstances regard favourably a request for a transfer of the administration of the Protectorate. He will, I trust, recognize that alike in history and in actual conditions the Protectorate differs greatly from Swaziland, and that it would be impossible in the near future to justify to Parliament a proposal for transferring the Protectorate.

"You are, however, at liberty to assure him that His Majesty's Government have no intention whatever of handing over the administration to the British South Africa Company, whose rights in the Protectorate are not administrative but commercial or industrial. These rights include, of course, the various mineral and land concessions duly recognized, and also the preferential right of acquiring further concessions for the purpose of specific development which is dealt with in the correspondence which has recently passed between the British South Africa Company and the Colonial Office, of which I enclose a copy in my despatch No. 127 of the 2nd instant. You should communicate this correspondence informally to your Prime Minister.

"General Botha will no doubt realise that although the Company's rights may restrict to a large extent the power of the Administration to deal with the land and minerals of the Protectorate it is not possible for His Majesty's Government, in face of previous admissions based on the highest legal authority, to disregard them."

**1919****3. Letter, with enclosed memorandum, from General Botha to the Secretary of State (Lord Milner)**

Savoy Hotel,

London, W.C.2.

2nd July, 1919.

Dear Lord Milner,

Referring to our conversation of yesterday, I have pleasure in enclosing a copy of a statement in connexion with Swaziland. Smuts is remaining in London for a few days longer, and I would be glad if you would have this matter settled before he leaves.

Yours faithfully,

LOUIS BOTHA.



## SWAZILAND

According to the Schedule to the South Africa Act the native territories of Basutoland, Swaziland, and Bechuanaland can at any time be taken over by the Union Government after arrangement with the Imperial Government. In that case special provisions are laid down for the future administration of the territories by the Union Government. Although the Schedule has been in force for nine years, no action in regard to the transfer of the territories has been taken, because from 1910 to 1914 the Union Government were fully occupied with the elaboration of the new Union Administration, and since then the War has engrossed all attention. The end of the War finds the position of the Union immensely stronger than before, and a great extension of its area and work through the mandate over South West Africa about to be conferred on it by the Great Powers. The question now arises whether the time has not come for the review of the situation as regards the native territories.

Although Basutoland will have to be taken over by the Union sooner or later, there does not appear to be any special urgency for the change at present. Indeed there are some reasons to the contrary. But the transfer of Basutoland will have to be kept steadily in view, as a very awkward situation would arise in the event of any future trouble between Basutoland and the Union in case it should then still be under Imperial Administration.

With regard to Bechuanaland, there is no special urgency for the transfer at present. But as soon as the inclusion of Rhodesia in the Union becomes a practical question, the transfer of Bechuanaland will have to be dealt with also.

There remains Swaziland, whose case is quite unlike the other two. Before the Boer War it was administered by the Transvaal Government. Since the Boer War the territory has been definitely partitioned between the whites and the natives. It is, therefore, not like Basutoland and Bechuanaland, an exclusively native territory. It contains a fair white population, consisting mostly of old Transvaal residents. The Swazis are physically of an inferior type, and will, more than most other native tribes, continue to lean on the whites. There is no reason whatever why the transfer of this territory to the Union should not be immediately effected.

And there are very good reasons for such an immediate transfer. In the first place, it would enable the Union Government to put into practice the Schedule system of administration, and thereby gain valuable experience to guide it in the eventual administration of the other territories when they come to be handed over to the Union. It would be an experiment on a small scale with a native population already living among whites and well affected towards them, and therefore likely to be fruitful of suggestion for the future.

It would also enable the Union Government to make better provision for the political representation of the resident white population, who are now in a somewhat anomalous position.

And lastly, it would enable the Union Government to spend money on the development of the territory, which is very badly wanted, both in its own interest and in that of the Union. Especially is it necessary to build a railway line from the Transvaal High Veld through Swaziland, in order to open up the coal resources of the Transvaal and Swaziland and to provide additional communication with the coast. But the Union Government would not move in this matter, however useful and urgent it may be, while Swaziland is still an administration independent of it.

The time has, therefore, come when the Imperial Government should begin to give effect to the Schedule and transfer the administration of Swaziland to the Union. The Union Government press very strongly for the transfer, as it is their intention to provide full political and parliamentary rights and privileges for the European inhabitants of Swaziland, as a separate district on the same footing as all the other districts of the Transvaal.

## 1924

#### 4. Text of Letter of 23rd October, 1924, from General Hertzog (Prime Minister of the Union of South Africa) to the High Commissioner (Earl of Athlone).

With reference to our conversation of yesterday, Section 151 of the South Africa Act of 1909 provides that the transfer to this Government of any territories belonging to or under the protection of His Majesty, and inhabited wholly or in part by natives, on certain terms and conditions embodied in the Schedule to that Act, and I feel the time has arrived when serious consideration should be given to the question of the incorporation in the Union of the Bechuanaland Protectorate and Swaziland for the following reasons inter alia:—

Firstly.—As you are aware, the recently concluded agreement with Rhodesia excludes the importation of cattle into the Union, except under certain specified conditions. This agreement will necessitate similar restrictions being placed on cattle imported into the Union from the Bechuanaland Protectorate and Swaziland, and will no doubt materially further restrict the development of these territories. These restrictions will necessitate the finding of new markets for cattle from these territories.

Secondly.—Internal development under present conditions in these territories is not possible owing to the fact that their resources are so limited and considering the intimate geographical connexion of these territories with the Union, their incorporation with the latter has become essential to their own development and, as it seems to me, is fast becoming essential to the development, through railways and irrigation, of the Union itself.

Irrigation in the Union has reached great dimensions, and any future development in that direction from the North is effectively prevented until such time as incorporation takes place. Incorporation in the Union means also the development of these territories in this respect.

Thirdly.—Petitions have been received from the inhabitants of these Territories praying for incorporation in the Union. Petitioners include native Chiefs as well as the white inhabitants, all of whom realize the necessity for incorporation in the Union for their future welfare and prosperity.

With these facts before Your Excellency I shall be glad if steps could be taken to ascertain the feeling of His Majesty's Government in the matter of the incorporation of these territories in the Union. I may here say that during Mr. Thomas's recent visit to the Union I mentioned to him the matter of the incorporation of the Protectorate, and he was quite sympathetic. I did not at the time refer to Swaziland because I had not then had the opportunity of going into that question. Almost immediately after, however, the incorporation of that territory was likewise pressed upon me, and upon consulting the records I found that the question had already repeatedly been brought before General Smuts, who likewise felt the necessity for the incorporation but was waiting more favourable financial circumstances in the Union.



## 5. Statement issued by General Hertzog in December, 1924

"General Hertzog informed a deputation from Bechuanaland, which waited on him on Wednesday to request that steps should be taken for the incorporation of that territory within the Union, that he considered that the time had arrived for considering incorporation of Bechuanaland, also Swaziland, in the Union.

Such a step he considers would be in the interests of both the Union and those territories, but meanwhile the feelings of the British Government will have to be ascertained, and General Hertzog is taking steps to obtain their views."

## 1925

## 6. Statement issued to the Press by the Union Government on the 4th February, 1925

Recent deputations to the Prime Minister from the European inhabitants of Swaziland and Bechuanaland having aroused considerable public interest in the political future of these territories the Union Government has thought it advisable to make the following statement of the position.

The Imperial Government has not been asked by the Union Government to come to any decision on the question of the transfer to the Union either of the Bechuanaland Protectorate or Swaziland administration. The Prime Minister has so far done nothing more than express to Mr. Thomas his personal belief that the time is approaching when views on the question might be informally exchanged with advantage and after present British Government assumed office Mr. Amery was acquainted with the suggestions that had been made to his predecessor.

The representations which the deputations have made to the Prime Minister will be borne in mind but the Union Government feels that there are many important considerations which will require careful study before any negotiations with the Imperial authorities can be initiated. The Union Government does not in any event intend to ask for the transfer of either territory at present nor will question so far as they are concerned be raised during the forthcoming session of Parliament.

## 7. Extracts from the Report of a Debate in the House of Assembly, Capetown, on 25th March, 1925

\* \* \*

MR. J. W. JAGGER (S.A.P., Cape Town Central) invited a statement from the Prime Minister on British Bechuanaland, South West Africa, and segregation.

GENERAL HERTZOG (Prime Minister): I gladly take the opportunity to answer the questions put by my hon. friend. I should have liked to have been able to answer him more definitely, but under the circumstances I am afraid he will have to be satisfied with what I can give him.

\* \* \*

Then in regard to British Bechuanaland, I have been consulted by inhabitants of the Transvaal, on the border, and also through letters from others in Bechuanaland, along the border—Europeans—and they very earnestly desired an interview with me. Eventually I did give them the interview, and I said to them at the time that

as far as the Union Government were concerned I thought that the time was approaching to consider these questions of Bechuanaland and Swaziland, and we would be quite prepared, if circumstances were favourable, to consider them. But with regard to both I immediately told them that our position has always been, as a Party, that we are not prepared to incorporate in the Union any territory unless the inhabitants of the territory are prepared to come in, and that was the position we were going to take up in regard to Bechuanaland.

I believe my hon. friend knows there was a great outcry in the papers—for what reason I cannot understand, but probably there is good cause for taking the part that some of these papers did take—but I have nothing to do with that. All I can say is I consider the time has come, provided that the people—natives as well as Europeans—are prepared to come into the Union. If they are not, very well, I am not prepared to have them incorporated in the Union. I think, also, there are certain difficulties with regard to Bechuanaland which would make it less advisable to take any step of that kind to-day.

With regard to Swaziland I have also been approached, both by Transvaal inhabitants who have interests in Swaziland and by European inhabitants of Swaziland. With regard to this, I think that matters are more favourable at present than they are with regard to Bechuanaland.

But in Swaziland, too, as I have said, I have taken up the position that unless the people are prepared and desire to come in I am not going to insist upon their coming in. I must say, with regard to Swaziland, I have the fullest hopes that before long the inhabitants there will see that the best thing for them all is to come into the Union.

## 1926

## 8. Letter from the High Commissioner to General Hertzog enclosing a copy of the Secretary of State's (Mr. L. S. Amery's) despatch of 4th December, 1925

Cape Town,

21st January, 1926.

Dear General Hertzog,

I enclose herewith, for your personal information, a copy of the Confidential despatch from the Secretary of State which was discussed in Pretoria about the question of transferring the Government of Swaziland to the Union.

The despatch sets down the main principles on which His Majesty's Government would authorise me to open a preliminary discussion with you, though of course they may wish to make further representations should you desire to pursue the matter further.

Yours sincerely,

ATHLONE.



## Enclosure

(Despatch from the Secretary of State to the High Commissioner)

Downing Street,  
4th December, 1925.

My Lord,

Although the Government of the Union of South Africa have not officially raised the question of the transfer of the administration of Swaziland to the Union, I understand that General Hertzog has declared his intention to outline the Native Policy of his Government in the Union Parliament during the next session, and that this step is likely to be followed by a request for the transfer of the Swaziland Administration as provided for in the Schedule to the South Africa Act, 1909. I think that you will agree that it is desirable that you should discuss the matter fully and informally with General Hertzog before he takes any overt action which would commit him to a definite application for transfer. I have therefore decided to review for your guidance, the considerations which would influence His Majesty's Government in coming to a decision in the event of their being approached on this question.

2. These considerations have been summarized in the attached notes which you may find it convenient to refer to in your conversations with the Prime Minister, but it may be helpful to amplify them here in order to explain more clearly the views of His Majesty's Government.

3. In proposing that you should discuss the matter with General Hertzog I should explain that His Majesty's Government would not themselves regard the present moment, when the native policy of the Union is about to be subjected to radical revision, as a very opportune one at which to put forward a proposal for the transfer of Swaziland to the Union. It will be appreciated, however, that the present state of uncertainty, consequent on the various statements made during recent years indicating that an application for the transfer of the Territory must be regarded as imminent, is very embarrassing to His Majesty's Government, and makes it impossible to administer the Territory except in a purely hand-to-mouth manner. If, therefore, General Hertzog proposes to ask for the transfer of the administration next year, His Majesty's Government are prepared to discuss matters with him on that basis: if he does not, it would be desirable to arrive at an understanding as to the period for which the question is to be regarded as postponed.

4. In the event of General Hertzog deciding to apply for the transfer of the Territory, His Majesty's Government are bound by the pledges which they have made to submit the Union Government's proposals to the European and native inhabitants of the Territory. It will be readily appreciated that the greatest prudence would have to be observed in selecting the right moment to consult the inhabitants of the Territory and in framing the proposals to be submitted to them, since if the reception accorded the proposals were such as to render it necessary to withdraw the application, it would be hardly possible to revive the question for some years to come. I consider therefore that it is important that General Hertzog should submit his proposals to His Majesty's Government, and in the fullest possible elaboration, before any steps are taken to move addresses in both Houses as provided in Section 151 of the South Africa Act. I think also that General Hertzog will agree, in view of his statement in the Union Parliament on

the 25th March, that it will be desirable that the consultation with the inhabitants should take place before any formal steps are taken in the Union Parliament.

5. I understand that although the Advisory Council have asked that Swaziland should be taken out of the Schedule to the South Africa Act they would become reconciled to the form of government prescribed by it if Swaziland were granted representation as an electoral entity in the Union Parliament. The point to which they attach chief importance is that a guarantee should be given that the construction of a railway through Swaziland would be commenced immediately upon the transfer being effected, and it seems doubtful whether General Hertzog could hope to secure the concurrence of the white population unless such an undertaking were definitely given them. Whilst on this subject you might, if necessary, explain to him that, although the finances of the Territory do not permit of the Administration constructing a railway through the Territory, it is realised that if the Union Government should be prepared to undertake the construction of such a railway as part of its railway programme, it would be of the greatest benefit to the Territory, and that His Majesty's Government would not desire that such action should be made dependent upon the transfer of the Territory to the Union, and would be glad to afford all possible facilities.

6. The main concern of His Majesty's Government will, however, be in regard to the position of the natives who, it may be supposed, judging from their attitude hitherto, may not be inclined to regard with favour any proposal for transfer. It is therefore desirable that the Resident Commissioner should be in a position to explain fully to them to what extent the system of administration to which they are accustomed would be changed in consequence of the transfer of the Territory to the Union, and it would be necessary to ask General Hertzog to indicate how he contemplates that the system of administration outlined in the Schedule to the South Africa Act will be worked in practice, and how far the new native legislation proposed in the Union will affect the position of the Swazi natives.

7. Under the terms of the Schedule it is provided that it shall not be lawful to alienate any land forming part of the native reserves in Swaziland from the native tribes inhabiting the Territory, and assurances will naturally be desired by the Swazis that their native areas in Swaziland will be kept intact for their own use. The establishment of the native areas in Swaziland constituted an essential part of the general settlement of the difficulties which arose out of the concessions granted by the former Chief Mbandini, and it is laid down by Proclamation that the areas are set apart for the sole and exclusive use and occupation of natives of the Territory. The existing legislation also provides that no person other than a native of Swaziland shall, without the written permission of the Resident Commissioner, use or occupy any portion of a native area (except in the exercise of rights held under a mineral concession) and that before granting any such permission the Resident Commissioner shall satisfy himself that there is no objection on the part of the Paramount Chief and Council of Swaziland, or on the part of any natives who, in the opinion of the Resident Commissioner, are likely to be affected thereby. His Majesty's Government presume that no difficulty will be felt in accepting the view that these native areas must continue after transfer to be reserved for the natives of Swaziland, that the conditions on which persons other than natives of the Territory are allowed to reside in the native areas should be maintained and that any special regulations which may be required, after transfer, should be prescribed by the Commission to be set up under the Schedule to the South Africa Act.



8. It will be seen that reference to this Commission, and to the similar Commission established under the Union Act No. 23 of 1920, was made in the statement made on behalf of His Majesty's Government to the Swazi Deputation in 1923. His Majesty's Government would wish the Resident Commissioner to be able to inform the natives, in submitting to them any proposal for transfer, of the names of the members of the Commission to be constituted under the Schedule to the South Africa Act. It will be noticed that the Schedule provides that the members of the Commission shall not be qualified to become or to be members of either House of Parliament, whereas the Union Act constituting the Native Affairs Commission provided that "notwithstanding anything to the contrary in the South Africa Act, 1909, a member of either House of Parliament may be appointed a member." This point needs to be borne in mind in the event of it being desired to use the Native Affairs Commission as the Commission to be constituted under the Schedule.

9. His Majesty's Government feel that much importance will be attached by the native community to the maintenance of the system under which the administration of justice in cases where natives are involved is entrusted to officers experienced in the ordinary duties of native administration. They think that it would accordingly be advantageous if the Resident Commissioner could assure the natives that the appointment of any new officers to such posts in the Territory after transfer would be dealt with as a matter on which the Commission to be set up under the Schedule would be consulted in accordance with the terms of Section 7 of the Schedule. In addition, they would wish to be able to inform the natives whom the Union Government proposed to appoint as the first Resident Commissioner.

10. It will, of course, be understood that in the event of the transfer of Swaziland to the Union, the Union Government must assume full responsibility for all financial obligations of the Administration existing at the date of transfer. It is assumed that the Union Government would repay the loan which the Administration has had from Basutoland (the amount of which is now £35,000) in addition to any outstanding advances made by the Crown Agents for the Colonies.

11. It will be observed that in the enclosed Notes attention is called to Section 17 of the Schedule, and it seems clear that the present restrictions on the importation of cattle from Swaziland into the Union would be inconsistent with this provision. You have already pointed out to the Union Government that these restrictions cannot be reconciled with the terms of the existing Customs Agreement between the Union and the High Commission Territories, and in the event of the transfer of Swaziland to the Union it is evident that they would have to be removed.

12. The above observations have been confined to the case of Swaziland, as it has been assumed that the Union Government do not contemplate putting forward any application at present for the transfer of the administration of either the Bechuanaland Protectorate or Basutoland to the Union. If, however, you should find it necessary to refer to these Territories in the course of your discussion with General Hertzog you should explain that His Majesty's Government would not feel able to entertain any such application in present circumstances.

I have, etc.,

L. S. AMERY.

(Enclosure to Mr. Amery's despatch)

# Notes on the question of the transfer of the Administration of Swaziland to the Union of South Africa

The question of the transfer of the Administration of Swaziland to the Union is governed by the following considerations:—

(I) Pledges given by or on behalf of successive Secretaries of State to—

(a) Parliament;

(b) the inhabitants of the Territory;

(II) The conditions prescribed in the Schedule to the South Africa Act, 1909;

(III) The wishes of the inhabitants.

## I. Pledges given by His Majesty's Government

When the South Africa Bill was before the House of Commons the Under-Secretary of State for the Colonies stated on behalf of His Majesty's Government that—

"the House may rest assured—and I have the full authority of the Government and the Prime Minister for saying so—that it will have the fullest opportunity of considering the matter before the transfer of the Protectorates."

At a later stage of the debate he stated:—

"The wishes of the natives in these Territories will be most carefully considered before any transfer takes place."

At the same time the former assurance was repeated with an additional statement, that the House

"will have an opportunity of discussing, and, if they wish, of disapproving of the action of the Government."

In November, 1919, the following question was asked in the House of Commons:—

"whether His Majesty's Government are considering any alteration in the status of the Protectorates of Swaziland, Bechuanaland, and Basutoland; whether the inhabitants will be consulted before any change in the status does take place, and whether the House of Commons will have an opportunity of debating the matter before any action is taken."

The answer of the Under-Secretary of State for the Colonies was as follows:—

"the answer to the first part of the question is in the negative, and to the second and third parts in the affirmative."

In February, 1925, the following question was asked in the House of Commons:—

"Whether the Secretary of State for the Colonies can give an assurance that no steps will be taken to concur in any way with the incorporation of Bechuanaland or Basutoland or Swaziland in the Union of South Africa before an opportunity has been given to this House to record its opinion on this matter of our responsibility for and to the native races."

to which the Secretary of State made the following reply:—

"In accordance with the pledges given when the South Africa Bill was before Parliament, the House will have the fullest opportunity of discussing, and, if they wish, of disapproving any proposed transfer of these Territories to the Union."



In the course of a statement in February, 1925, in the House of Lords, Lord Onslow stated on behalf of His Majesty's Government that if at any time His Majesty's Government should be asked to come to any decision in regard to any such transfer

"they will not make any decision until the native population and the white population have had full opportunity of expressing their views, and any views they may express, and any representations which either the native population or the white population may make to His Majesty's Government will receive the most careful consideration before the Government come to any final decision in regard to the matter."

That the Union Government recognise that any question of transfer cannot be considered without reference to the views of the inhabitants is evident from the following statement made by General Hertzog to the Union Parliament on the 25th of March, 1925:—

"Our position has always been as a party, that we are not prepared to incorporate in the Union any Territory unless the inhabitants of the Territory are prepared to come in."

## II. The Schedule to the Act

The conditions on which transfer may take place are governed by Section 151 of the South Africa Act, and the terms of the schedule which were drawn up by the South Africa National Convention and accepted by that body and the Imperial Parliament as embodying certain principles and safeguards to native rights long recognised as essential.

Three important features of the Schedule which may be noted here are:—

- (a) The provisions prescribing that no part of the native reserves may be alienated from the native tribes inhabiting the Territories (Section 14);
- (b) The composition of the Commission charged with the duty of advising the Prime Minister in the administration of the Territories (Section 3);
- (c) The provisions prohibiting the levying of any differential duties or imposts upon the produce of the Territories (Section 17).

The importance of the Schedule as a guarantee that the existing rights of the natives would not be prejudiced in the event of transfer was explained to the Swazi deputation in 1923 by the Secretary of State in the attached statement. On this occasion the Secretary of State said, "I need hardly say that His Majesty's Government would not support in the House of Commons or elsewhere any proposal for transfer if it involved the impairment of such safeguards for native rights and interests as the Schedule to the South Africa Act was designed to secure".

## III. Wishes of the Inhabitants

### (a) European

The attitude of the white population has already been indicated by deputations from the Advisory Council to the High Commissioner and the Union Government, and in resolutions recently passed at various centres of Swaziland. These resolutions were to the effect that every possible effort should be made to secure from the Imperial Government the construction of a railway through Swaziland, with such adjustments in the Administration as will give the public a larger voice in the control of the finances of the Territory. Failing such assistance being forthcoming from the Imperial

Parliament, it is asked that steps may be taken to arrange for incorporation in the Union, provided that:—

- (i) Swaziland is removed from the terms of the Schedule to the South Africa Act;
- (ii) The entity of the Territory is preserved and Europeans secure all franchise and other privileges and benefits of any and whatever description such as are enjoyed by the white population of the Union;
- (iii) Railway construction through the Territory is undertaken, such railway construction to be commenced and continued uninterruptedly through Swaziland from the date of incorporation;
- (iv) The native areas are preserved as at present demarcated; and
- (v) The areas at present occupied by Europeans are preserved for their occupation.

It is clear from what has been set out in the preceding paragraphs of this memorandum that resolution (i) cannot be entertained by His Majesty's Government. In so far as resolution (ii) is not in conflict with the system of Government prescribed under the Schedule, His Majesty's Government have no objection to offer, and appreciate the desire of the inhabitants to be represented in the Union Parliament as an electoral entity. As regards resolution (iii), it is recorded in the report of the deputation which waited upon the Union Prime Minister on the 6th January, 1925, that General Hertzog stated "the Deputation could be assured that Union would mean railway development without delay for Swaziland". Railway development is obviously a question to which the white inhabitants attach paramount importance. Resolutions (iv) and (v) are in conformity with the views of His Majesty's Government.

### (b) Native

The natives have at frequent meetings with successive High Commissioners protested against the transfer of their territory to the Union, and as recently as the 14th July, 1925, submitted a Petition to this effect. It will be appreciated therefore that considerable hesitation on the part of the natives to agree to any change in the form of administration to which they are accustomed is likely to be manifested when the time comes to submit to them any proposal for the transfer of the Territory to the Union. It will accordingly be important that His Majesty's Government should be in a position to explain to them fully to what extent the present system of native administration would be changed in consequence of the transfer, and how it is contemplated that the system outlined in the Schedule to the South Africa Act will be worked in practice.

1926

## 9. Letter from General Hertzog to the High Commissioner

6th April, 1926.

Dear Lord Athlone,

In January you were good enough to send me, for my personal information, a copy of a Confidential despatch from the Secretary of State for Dominion Affairs, relative to the question of the transfer of Swaziland to the Union. That despatch was, I notice, addressed to you as High Commissioner for South Africa. It is dated the 4th December, 1925, and sets



out the main principles in which His Majesty's Government in London would authorize you to open a preliminary discussion relative to the time and conditions of transfer.

The despatch anticipates most of the points I had been considering before I had a conversation with you on this question in Pretoria the latter part of last year. I had then prepared certain proposals to form a basis for informal discussions. The terms of the despatch make it possible for me to put forward those proposals with but slight modifications and for the purpose of such discussions.

I think, however, before I indicate categorically those proposals it will be convenient if I refer paragraph by paragraph to the matters discussed by the Secretary of State in the several paragraphs of his despatch.

2. With regard to the first paragraph thereof, I had myself felt in drawing up my proposals last year that, when the time came for outlining or setting before Parliament in the form of Bills the Union Government's Native Policy, the question of the transfer of Swaziland might inevitably be raised. Since, however, nothing more will be done during the present Session than formally laying my Bills dealing with Native Policy before the House of Assembly and it is unlikely that any general discussion of the proposals will give effect to that Policy will take place (though it is impossible to say that it will not take place when the opportunity is afforded in Committee of Supply on the Native Affairs Vote) no discussion as to the transfer of Swaziland is likely to occur and certainly no such discussion would be encouraged by the Union Government.

3. It is unnecessary, therefore, for me to say more with regard to paragraph 3 of the Secretary of State's despatch than that I appreciate that the present time is not an opportune time, either for His Majesty's Government in London or for the Union Government, for putting before the public any proposals for the transfer of Swaziland to the Union. It may be that next year the time will become opportune for such a public discussion. If so the proposal would be for a transfer some time about the latter end of 1927 or early in 1928. I think it would be undesirable to specify any period later than 1927-28 to which the question is to be regarded as postponed. I shall hope, however, to have a further opportunity when I go to London in September or October for the Imperial Conference, of discussing with the Secretary of State the date of transfer, the conditions thereof, as well as any questions arising out of the conditions involved in my proposals.

4. With regard to paragraph 4 of the Secretary of State's despatch I appreciate entirely the terms of the pledges which various Secretaries and Under-Secretaries of State have given to the House of Commons as to the submission of the Union Government's proposals, not only to that House but also to the European and native inhabitants of the Territory. As a Member of the Orange Free State Delegation, which attended the National Convention and as such proceeded to London in 1909, when the Bill for the South Africa Act was submitted to the House of Commons, I was (I think) present when the pledge was given by the then Under-Secretary of State and I have noted the answers to questions in that House given in 1919 and 1925 by the Secretaries of State. Further, the statement which I made to the Union House of Assembly on the 25th March, 1925, not only represented the views of my colleagues and myself at the time, but correctly states our present views.

5. With regard to paragraph 5 of the despatch it will be seen from the summary of my proposals which I will presently set out, that an essential

feature of those proposals is the creation of Swaziland as an electoral constituency sending one European representative to represent the European inhabitants of the territory in the Union Parliament. I have acquired information as to the informal conversations which took place between 1919 and 1922 between my two predecessors and prominent European settlers in Swaziland; and to acquaint myself with the extent to which the construction of a railway influenced the latter in the initiation of those conversations; with the fact that the failure in 1922 of the negotiations between the Union Government and the Portuguese Government in regard to railway matters partly caused the abandonment of the idea of a railway through Swaziland linking up with the Portuguese railways and thus partly caused also the abandonment of proposals for the transfer of Swaziland; and with the further fact that the recent development of certain areas of Swaziland for cotton-growing has revived the desire of the European inhabitants for railway and road development in the Territory. I mention these facts merely to indicate my knowledge of the anxiety of those inhabitants that a railway should be constructed in the Territory as early as possible and of the bearing of the railway question on the consent of the Europeans to the transfer of the Territory to the Union. But it would be impossible for the Union Government to give anything in the nature of a guarantee in this matter. If the Territory were transferred to the Union on conditions whereby the European inhabitants received representation in the Union Parliament, they would be in a strong position to press for railway construction in the Territory. Railway construction under the Union railway system is a matter entirely for Parliament, acting on the advice and report of the Union Railway Board—a statutory body which is bound by certain rules in making its recommendations. It is, I believe, still a very open question as to the particular area in the Territory which the first railway therein should traverse; and is a question on which the European inhabitants of the Territory are not themselves by no means unanimous. But that a railway should be constructed in the Territory as soon as possible after transfer of the Territory to the Union takes place, seems reasonably certain. That question would be pressed on the attention of the Railway Board and the Government, not only by the European representative of the Territory in Parliament, but by others who, while not inhabitants of the Territory, have interests therein.

6. I come now, however, to the matter which is of course the main concern of His Majesty's Government in London and which is dealt with in paragraphs 6 to 10 of the Secretary of State's despatch of 4th December, 1925, to yourself as High Commissioner, viz., the position of the native inhabitants of the Territory and the extent to which they may be affected by the transfer of the Territory to the Union. It will be seen from the summary of my proposals, to be set out presently, that they do not involve any alteration of the Scheduled provisions of the South Africa Act *in regard to the natives*; certainly not in regard to natives occupying the 35 native areas scheduled under the High Commissioner's Proclamation of 1917. To some extent the natives who are outside those native areas may be affected, as practical difficulties may arise in placing these particular natives under some of the laws to which the Europeans who live alongside them would not be subject. If, however (as seems feasible) all natives—whether within or outside the native areas set aside under the High Commissioner's Proclamation of 1917—are subject only to laws in the form of proclamations issued by the Union Government in accordance with the Scheduled provisions of the South Africa Act, I see no reason why any change in the existing system of administration should take place as regards natives. That system is,



after all, not different in essentials from the system which has prevailed in the Transkeian Native Territories of the Cape Colony (now Province) since the later years of last century, and which still prevails. It is also a system which, under my native proposals, may be applied, as opportunity arises, to other areas of the Union which are exclusively or mainly inhabited by natives. With regard to the natives living outside the statutory native reserves in Swaziland, the fact that they owe their present occupation of land to conditions agreed upon between them and the European concessionaires between 1909 and 1913 would have to be borne in mind in administration and legislation for the Territory but it would be unthinkable that the natives in the statutory native reserves would be in any way disturbed. As regards the natives outside those reserves it will be seen from the summary of my proposals that in matters in which natives solely are concerned they also should be subject to laws in the form of proclamation issued under the Scheduled provisions of the South Africa Act. But it seems to follow that such laws would not necessarily be the same as for those natives who are within the reserved areas and in matters of administration there might necessarily be differences.

7. I come now to the question of the Commission to be appointed under the Scheduled provisions of the South Africa Act. It is impossible of course to indicate at the present time what would be the personnel of that Commission. It would be convenient, no doubt, that the members for the time being of the Union Native Affairs Commission appointed under Act 23 of 1920, should function also as the Commission contemplated under the Scheduled provisions of the South Africa Act. It is true that under the Act of 1920 members of the Union Parliament are not disqualified from being members of the Union Native Affairs Commission and two of the three are actually members of Parliament. One of these, however, is a Senator appointed to the Senate by reason of his special experience in native affairs. The remaining Commissioner, who is not and has not been a member of Parliament, is also a gentleman specially conversant with, and of long experience in, matters peculiarly affecting natives. There seems no reason to suppose that any Union Government would desire to appoint to the Scheduled Commission men who were not at least as qualified as the two Commissioners last referred to. It seems doubtful also, in view of the provisions of the South Africa Act with regard to the nominated Senators, whether membership of the Union Parliament should continue to remain a disqualification for the Commission under the Scheduled provisions of the South Africa Act.

8. With regard to paragraph 9 of the Secretary of State's despatch, inasmuch as my proposals do not involve an alteration of the Scheduled provisions so far as *natives in the territory* are concerned, the Commission, under the Scheduled provisions, would necessarily be consulted as to the officers to be appointed for the administration of justice. There is I think every reason to suppose that advantage would be taken, as vacancies occur, of appointing persons such as these who have grown up and served under the system obtaining in the Transkeian Native Territories of the Cape Colony. The appointment of those Magistrates has always remained in the hands of the Union Minister of Native Affairs and they have been habitually selected by him on the records and recommendations of the Union Native Affairs Department. It is impossible, however, to give any indication at the present time as to the person likely to be selected as the first Resident Commissioner of the Territory, but it would obviously be to the interest of the Union Government that the person so appointed should be one having the confidence of the native population.

9. With regard to paragraph 10 of the despatch, dealing with financial obligations of the Territory, the Union Government would assume the present loan obligations of the Swaziland Administration to Basutoland, as well as any reasonable outstanding advances made in respect of the Territory by the Crown Agents for the Colonies. The Union Government would of course desire to have some idea as to the amount of those advances.

10. The last matter which the Secretary of State specifically mentions is the restriction on the importation of cattle into the Union from Swaziland. Such a restriction, if it interferes with freedom of trade and intercourse between the Territory and the Union, would be inconsistent with Clause 17 of the Scheduled provisions. I must point out, however, that movements of cattle from and to, as also within, the Union have from time to time to be prohibited or restricted in order to prevent the spread of the severe contagious diseases of stock which at times become prevalent throughout every part of South Africa. Such a restriction is as much in the interests of the stock owners of the territory as it is in the interests of those of the Union.

11. Having dealt specifically with the various points raised in the Secretary of State's despatch I will now summarize, as fully as is at present possible, my proposals as to the conditions on which the transfer of the Territory to the Union might take place. That summary also indicates what alterations in the Schedule would be necessary if transfer were effected on those or similar conditions.

The summary is as follows:—

- (i) That the application of such of the Scheduled provisions as dealt with administration and legislation should, by act of the Union Parliament be confined—
  - (a) to the thirty-five areas scheduled under the High Commissioner's consolidating and defining Proclamation of 1917 and to any further areas set aside, either under that Proclamation or otherwise, for sole and exclusive occupation by natives; but should apply to all persons—whether natives or not—in those areas; and
  - (b) to matters in which natives solely are concerned in other parts of Swaziland; e.g., taxation of natives, the position of natives in courts of law whether in criminal or civil proceedings; and native education and expenditure thereon.
- (ii) That, in regard to matters in which natives are not directly concerned, the Territory should be treated as a district of the Transvaal and that the European inhabitants of the Territory should elect one member to the Transvaal Provincial Council and be for all matters mentioned in Section 85 of the South Africa Act subject to that Council and the Transvaal Provincial Administration. That Council and that Administration would thus have power to deal with education for persons other than natives, roads, bridges, ports, outspans, health committees, hospitals and matters of purely local concern. The Provincial Administration would have the assigned revenue from licences to Europeans which it has from other Transvaal districts under the Provincial Subsidies Act, 1925, and the Licences Consolidation Act of 1925.



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effect of sections 20 and 25 of the Schedule (which is dealt with by me at a later stage hereof), they likewise do not contemplate a departure from the terms of the said Schedule in future.

Under section 22 of the Schedule provision is made for the protection of the rights of officers of the public service and in conformity with the intention of the said section the Union Government would be prepared to take over the serving European and Native officials in the Territory.

I also agree that the preparation of a document on the lines suggested by you would be a very useful step indeed and have already given instructions in this respect.

With regard to the point raised by you as to whether a separate document should be made available for Europeans, I feel that especially in view of the position of Swaziland, it would be advisable to prepare a further document dealing with the matters more especially affecting the European inhabitants of such territories as are concerned. This document is also in course of preparation and both documents will be submitted for your observations in due course.

Perhaps it would be well to indicate here that in the document dealing with the form of administration it would be emphasized that in actual practice no change in the existing form of administration will take place and the only real and substantial change in this respect would be the transfer of the legislative and administrative control at present exercised by His Majesty's High Commissioner to the Governor-General of the Union.

In the document the functions of the Commission to be appointed under section 2 of the Schedule would be emphasized.

I likewise agree that the manner in which the above documents should be made available to the Native Authorities in the Territories would be an appropriate subject for further discussion.

In this connexion the thought occurs to me that at some stage or other, possibly an early one, or, in any case, at the right moment of time it might be found important and necessary to give the inhabitants of the Territories an opportunity of putting such questions or obtaining such further information as they may desire.

The question whether, in such event, representatives of the Union would be afforded an opportunity of attending pitsos and similar gatherings, might become a very vital one and seems to me to be one which might usefully be borne in mind during all the further stages these discussions may take.

In the second place, you mention in page 13 of your letter the matter of sections 20 and 25 of the Schedule to the South Africa Act. You point out that section 20 states that the King may disallow any law made by the Governor-General in Council by Proclamation for any territory and that section 25 provides that all Bills to amend or alter the provisions of the Schedule shall be reserved for the signification of His Majesty's pleasure. You also mention that when the South Africa Act was passed, His Majesty would have been advised on such matters after transfer of the Territories by His Majesty's Government in the United Kingdom.

In this connexion you desire that we should discuss together what form of alternative security for the populations of the Territories on these points could take the place of the above-mentioned provisions of the Schedule and you emphasize that before it would be possible to settle the terms of the documents mentioned earlier in this letter, this point would have to be considered.

This aspect of the matter has been very fully considered by His Majesty's Government in the Union, for it is bound up very closely not only with the constitutional position of the Union—a matter which is and must always remain of profound importance to His Majesty's Government in the Union—but also with the fair name of the Government and European population of the Union in relation to their treatment of the native peoples of the Union.

In the latter regard, it devolves upon me to say that for a very considerable time it has been a matter of profound regret and concern to His Majesty's Government in the Union that owing to the prevalence of fundamental misconceptions and tragic ignorance of the real implications of the Union's policy towards the native peoples of South Africa on the part of a large portion of the electorate and the public Press of the United Kingdom and owing to the systematic dissemination of misleading and prejudiced information by a variety of public bodies and individuals on the same matter both in the United Kingdom and in the Union, there appears to prevail a wholly unjustifiable view that the inhabitants of the Territories in question will not receive fair and equitable treatment from the Union.

The real fact of the matter is that His Majesty's Government in the Union of South Africa and their officials must of necessity have an infinitely better understanding of the natives of South Africa and should likewise be far more capable of dealing with the overwhelming and vital problems occasioned by the presence of a variety of races in South Africa than any other government or body of persons.

The broad lines of the Union's native administrative policy are reflected in the system of government which is applied to the huge native population of the Transkei and it is the intention of His Majesty's Government in the Union to continue and extend that system.

This system coincides in its broad aspects with the system contemplated by the Schedule to the South Africa Act, and as I have already stated, the Union Government intend to adhere to the provisions of the said Schedule.

I shall now revert to the question raised by you as to what form of alternative security for the populations of the High Commission Territories could take the place of sections 20 and 25 of the Schedule.

The attitude of His Majesty's Government in the Union on this point is the following.

In the first place, it seems necessary to analyse and determine the true effect that sections 20 and 25 of the Schedule may be considered to have had.

In this connexion it would hardly seem necessary to draw attention to paragraph 22 of the Report of the Imperial Conference on the Operation of Dominion Legislation and Merchant Shipping Legislation, 1929, in which it was stated with regard to the right of disallowance by the Crown on the advice of Ministers in the United Kingdom as follows:—

"This practice did not however long survive for it was realized that under the conditions of self-government the power of disallowance should only be exercised where grave Imperial interests were concerned and that such intervention was improper with regard to *legislation of purely domestic concern*. In fact the power of disallowance has not been exercised in relation to Canadian legislation since 1873 or to New Zealand legislation since 1867; *it has never been exercised in relation to legislation passed by the Parliaments of the Commonwealth of Australia or of the Union of South Africa.*"



Accordingly the Conference agreed that "the present constitutional position is that the power of disallowance can no longer be exercised in relation to Dominion legislation".

In only *one* respect was a reservation made in this connexion, viz., the special position in relation to the Colonial Stock Act, 1900.

It will also be recalled that in paragraph 29 of the said Report, the Conference in dealing with the effect of provisions in Dominion Constitutions relating to the reservation of Bills, *inter alia*, specifically referred to section 25 of the Schedule to the South Africa Act.

Nevertheless it was recommended *without reservation* in paragraph 35 that it was open to those Dominions which desired to abolish provisions in their Constitutions relating to reservation, to do so.

His Majesty's Government in the Union of South Africa accordingly hold the view that when regarded in true constitutional perspective, the practical effect of sections 20 and 25 of the Schedule always was and would have been of no importance and, indeed, of negligible value to the inhabitants of the Territories in question. Indeed, it was stated in the most explicit terms at the Imperial Conference of 1926 and accepted without question that the principles contained in the Declaration of 1926 laid down nothing new in so far as Dominion independence or freedom was concerned and that it merely declared the legal position of Dominion freedom as it then already existed and had existed for years. The Statute of Westminster went no further.

Secondly, regarding it from a purely administrative angle, His Majesty's Government in the Union find it difficult to understand how any efficient check or sound judgment could be exercised or formed by His Majesty's Government in the United Kingdom in regard to a multiplicity of considerations which would influence the Union Government in coming to a decision upon facts in respect of which no other government would have a first-hand acquaintance and no real means of forming a sound judgment.

I am persuaded to think that upon a frank and realistic consideration of the true effect of sections 20 and 25 of the Schedule, you will agree with me that the only real security upon which the inhabitants of the Territories could rely by virtue of, or rather, in spite of, the said sections, would be a security based upon the sense of responsibility towards, and understanding of, the native peoples, which would determine every decision of the Union Government.

It is my duty to emphasize that it will ever be the attitude of His Majesty's Government in the Union that their policy and administration relating to the native peoples of South Africa is and must remain a matter "*of purely domestic concern*" in respect of which it would be inappropriate and even improper, to revive a constitutional theory which never in the Union's history has had any practical significance or to attempt to find for it any substitute which might have the semblance of an admission that His Majesty's Government in the Union is not completely qualified to fulfil the trust which rests upon them.

In the third place, you have been good enough to make certain suggestions relating to the further extension of practical measures such as the loan of Union technical officers to the Territories and to the desirability of relaxing the restrictions imposed in respect of the entry of cattle from the Territories into the Union.

With regard to the more extended loans of our technical officers and services, it is hardly necessary for me to say that the Union is prepared to do as much as possible in this direction.

In addition I would recommend the appointment of a joint advisory committee from among leading officials of the Union Government and the Protectorate Administration to consider and advise upon all necessary improvement schemes in the Territories, embracing such economic matters as water conservation and supply, soil erosion, afforestation, stock diseases, roads and transport, trade and so forth. In this way, with the technical and (where required) the financial assistance of the Union Government, surveys and plans of improvement and development could be jointly elaborated by the committee, which might considerably accelerate the rate of progress in the Territories.

I regret to say, however, that the question of removing or relaxing any restrictions relating to the entry of cattle is a most difficult one and wellnigh impossible of execution inasmuch as the political repercussions resulting therefrom in the Union would be very serious indeed and would much embarrass His Majesty's Government in the Union.

His Majesty's Government in the Union could hope to face the hostility of Union farmers and other difficulties, both economical and political, which would arise from a relaxation of the present restrictions relating to the entry of cattle, only if such relaxation would follow as a necessary concomitant of actual transfer.

In other words, Union cattle farmers could be placated in this matter only if the Union Government were placed in a position to use the argument that the relaxation of these restrictions is an exigency arising out of the transfer of the Territories and also the additional argument that, as a result of transfer, the influx of cattle from yet other adjacent territories could be more effectively checked.

In the fourth place, you are good enough to enquire whether I have any further suggestions to make in connexion with this matter.

Acting on this, I desire to revert once more to a matter which from time to time has caused grave concern and misgivings to His Majesty's Government in the Union and which has more than once in the past seriously prejudiced the cordial relationships which on the whole, prevail between His Majesty's Government in the United Kingdom and in the Union.

I refer to the unfortunate lack of understanding in the United Kingdom of the Union Government's attitude towards the natives of South Africa and of their sincere desire to ensure a treatment of these people which will at once be fair and just to them (the natives) and at the same time be compatible with the maintenance and preservation of European civilization in the Union and the whole of South Africa. The agricultural and industrial progress which is proceeding apace in the Union and bringing in its train a multiplicity of new and unforeseen problems in which both the European and native populations are very vitally concerned, is regarded as a sufficient justification by His Majesty's Government in the Union for emphasizing the need of finding a method of enlightening and guiding public opinion in the United Kingdom in order to ensure not only a proper understanding of the true constitutional effect of sections 20 and 25 of the Schedule but also a better appreciation of the Union's real policy and aims towards the natives in South Africa and of the stupendous problems which it has to face and solve in this connexion.

If intelligent propaganda seems desirable in the High Commission Territories, it would seem equally desirable that in the United Kingdom the enlightenment of the public mind on a similar or possibly much wider basis should be undertaken. Such a step would be of far-reaching importance and



would assist still further in ensuring the consolidation of that lasting goodwill between the Union and the United Kingdom for which His Majesty's Government in the Union stand.

His Majesty's Government in the Union would undertake to prepare the necessary literature in this connexion and would further be prepared to send representatives to the United Kingdom to present the cause of the Union, if His Majesty's Government in the United Kingdom considered action on such or similar lines desirable.

Secondly, under this head, I would suggest the desirability of filling future official vacancies in the Territories after consultation with His Majesty's Government in the Union. I refer to the correspondence which recently passed between us in this connexion and would also draw attention to the fact that the post of Resident Commissioner for Bechuanaland which recently became vacant has now been filled by the appointment of an official from Nigeria, whereas the vacancy might perhaps have been filled by an official more conversant with South African problems.

Thirdly, it becomes incumbent upon me to repeat with regret the Union Government's feeling that the efforts of His Majesty's officials in the Protectorates to discourage the agitation against joining the Union (to which you refer on page 7 of your letter) has so far met with very little success.

His Majesty's Government in the Union feel confident that if every effort were made on the part of officials in the Territories to counteract any attempt to prejudice the minds of the native inhabitants against the Union and actively to do their duty to inculcate friendly feelings on the part of the inhabitants towards the Union and sympathy towards the idea of transfer, positive results would become apparent within a very short time.

As I have said, it is a matter for regret with the Union Government that, if efforts have actually been made in accordance with the agreement arrived at between Mr. Thomas and myself in 1935 to produce a more friendly disposition on the part of the inhabitants of the Territories, these efforts have been productive of such meagre results.

I have already referred to the possibility that at some time in the future it may be found necessary to give Union representatives an opportunity of attending pitsoos in order to elucidate the memoranda setting out what the form of administration will be and what advantages to the inhabitants will accrue upon transfer.

Possibly His Majesty's Government in the United Kingdom may be able to suggest a method which would facilitate opportunities for direct contact between the inhabitants of the Territories and Union officials with a view to creating improved relations between the Union and the Territories.

In conclusion I wish once more to emphasize that, in the event of incorporation, the intention of the Schedule to the South Africa Act will be strictly carried out and this will accordingly also apply in respect of equal trade between the Union and the Territories.

As a matter of fact, in spite of protestations by Union farmer congresses and organizations for years, the Union Government have, until quite recently, been able to maintain a policy of free trade between the Union and the Territories.

By the passing of the Marketing Act during the 1936 Parliamentary Session, however, the power of regulating the marketing of Union agricultural products has been placed in the hands of the Union producers. Boards of Control composed mainly of producers may, under the Act, obtain extensive and

far-reaching powers to deal with the Union marketing problems. As is generally known, only the pastoral and agricultural products of the Territories are of any importance. It is conceivable that the representatives of the Union producers on the Boards of Control will not be so sympathetic towards the interests of the Protectorates.

The Union Government will, in this event, not be able to interfere directly and it will only be by means of incorporation that the Territories will be assured of equal treatment by the various producers' Boards of Control. While outside the Union, the Territories must necessarily be looked upon by Union producers as importing countries and treated as such.

In terms of the Marketing Act, however, Control Boards, which may be established for the different products, may not discriminate between producers in the Union. If, therefore, the Territories were incorporated in the Union, they would receive equal treatment with other areas of the Union.

In other words, the Territories would be assured of equal trading opportunities in the Union's markets and no differential treatment would be applied to the Territories.

Finally, I agree that a public announcement in due course as to future policy in regard to the matter of transfer, prepared by us jointly, would be advisable.

I further cordially agree that close and frank co-operation is the only method in which this matter can be settled in the interests of all the peoples concerned.

Yours sincerely,

J. B. M. HERTZOG.

(c)

Downing Street, S.W.1,  
27th January, 1938.

Dear General,

Thank you for your letter of the 29th December on the subject of the transfer to the Union of the government of the South African High Commission Territories. I am glad that you set out your views, as I did in my letter of the 25th September to you, frankly and fully.

I do not think that we need prolong our correspondence since we have agreed that the discussion should be continued with you by Sir William Clark, and indeed he has already been in touch with you on the subject. I ought however to mention—as Sir William has, I understand, already explained verbally to you—that it seems clear that you must have derived from your talk with Mr. Thomas in 1935 an impression as to the procedure contemplated in connexion with the agreement then reached which is different from that which I get from the relevant documents here. But we have agreed that there is no reason why the divergence of view on this should stand in the way of our reaching agreement as to further practical action. I am glad that you have arranged that memoranda should be prepared for the information of the inhabitants of the Territories, both Native and European, on the lines suggested in my letter of the 25th September, and that your discussions with Sir William Clark are making good progress.

With kind regards,

Yours, &c.,

MALCOLM MACDONALD.



1938

(d)

Cape Town,

16th February, 1938.

Dear Secretary of State,

I am in receipt of your letter of the 27th January, 1938, and agree that we should now see in what practical ways we could make further progress.

To revert, however, very briefly to the discussions in 1935 between Mr. Thomas and myself, I find it necessary to state that His Majesty's Government in the Union of South Africa construe the last sentence of the second paragraph on page one of the Draft Joint Statement as superseding the phrase "full acquiescence of the populations concerned" appearing in paragraph 4 of the *aide-mémoire* of 1935.

In other words, His Majesty's Government in the Union construe the said *aide-mémoire* as containing no reference to the phrase "full acquiescence of the populations concerned" and as not going further than the pledges which were given during the passage of the South Africa Act through the United Kingdom Parliament, the one relevant in the present context being that transfer should not take place until the wishes of the natives of the Territories had been most carefully considered.

Yours, &c.,

J. B. M. HERTZOG.

(e)

Cape Town,

1st March, 1938.

My dear Secretary of State,

Sir William Clark has handed me your message relating to my letter of the 16th February, 1938, and I have much pleasure in noting that there is no question of altering or adding to the pledges which were given during the passage of the South Africa Bill of 1909.

With regard to the actual terms of the *aide-mémoire* of 1935, in order to avoid anything which might have the semblance that I have at any time agreed to a modification of the 1909 pledges, I propose in future rather to stress the measure of effective co-operation upon which His Majesty's Governments of the United Kingdom and of the Union have agreed than to deal with the significance of the phrase "full acquiescence of the populations concerned" and possibly you may decide upon a similar course of action.

As I appreciate your difficulties with regard to this matter and have made my own position clear, I agree that no useful purpose could be served at this stage by insisting on an actual alteration in the terms of the *aide-mémoire* of 1935.

Yours, &c.,

J. B. M. HERTZOG.

1938

## 28. Extract from Official Report, House of Commons, 29th March, 1938

MR. MACDONALD: General Hertzog and I took the opportunity of his visit to England in May and June last to discuss the situation in regard to the transfer to the Union of the Government of the High Commission Territories and have since continued our communications on the subject. As regards the principles involved, His Majesty's Government in the United Kingdom entirely accept the view expressed by General Hertzog in a speech in London in May, 1935, that Section 151 of the South Africa Act (which deals with the transfer of the Government of the High Commission Territories to the Union) has a meaning and intention. His Majesty's Government in the United Kingdom fully recognize the significance of the section and do not seek to minimize it. At the same time the position of the United Kingdom Government is also governed by the pledges which were given during the passage of the South Africa Bill through the United Kingdom Parliament in 1909, namely, that transfer should not take place until the wishes of the natives of the Territories had been most carefully considered, and that before such transfer the United Kingdom Parliament should be given the fullest opportunity of expressing its views.

Bearing these fundamental conditions in mind, General Hertzog and I have been jointly studying what is the best and most practical course to pursue. We have especially had under consideration the progress made with the policy of co-operation adopted three years ago, the aim of which as set out in the *aide-mémoire* of 1935 was to demonstrate to the peoples of the Territories that "the Union Government are working in concert with the local administrations with a real and generous desire to develop and improve conditions in the Territories." It seems to us that, putting aside for the moment large financial schemes, there is room for a closer co-operation on lines which have not yet been fully explored. We have therefore agreed to constitute a standing joint Advisory Conference consisting of the Secretary for Native Affairs and two other officers of the Union Government together with the Resident Commissioners of the three High Commission Territories, whose function it will be to study openings for co-operation between the Union Government and the administrations in matters affecting the development of the Territories and to consider any matters of joint concern to the Union and the Territories such as prevention and control of animal diseases, marketing of produce, prevention of bubonic plague, etc. The establishment of this Advisory Conference would not, of course, affect the present responsibility of His Majesty's Government in the United Kingdom for the government of the Territories.

It has also seemed to us desirable that the peoples of the Territories should have before them a clear picture of the terms on which the transfer of the Government would take place, if decided upon. Such terms would naturally follow closely the provisions of the Schedule to the South Africa Act of 1909, but it seems to us important that His Majesty's Government in the Union should set them out in a more convenient and more complete form, so that the peoples of the Territories may appreciate the conditions under which the Territories would be governed, the position in regard to the maintenance of the tribal institutions of the natives, the economic advantages which the Union Government anticipate would accrue to the peoples of the Territories and any other relevant matters. It has accordingly been arranged that memoranda should be prepared by the Union Government setting forth the terms which they would propose and that these memoranda should be made available for the information of the native and European inhabitants of the Territories. We feel that this step will be very helpful in clarifying



## 29. First Report of the Joint Advisory Conference on Co-operation, February, 1939

### Members :—

E. C. RICHARDS, C.M.G., Resident Commissioner of Basutoland (*Chairman*).  
 C. N. ARDEN CLARK, Resident Commissioner of Bechuanaland.  
 C. L. BRUTON, O.B.E., Resident Commissioner of Swaziland.  
 J. E. HOLLOWAY, Secretary for Finance.  
 D. L. SMIT, Secretary for Native Affairs.  
 P. R. VILJOEN, Secretary for Agriculture.

1. During the first half of November, 1938, the members of the Conference made a tour of investigation through the eastern parts of Bechuanaland Protectorate as far North as Serowe and through Swaziland.

2. The time available to members did not allow them to visit the western and northern parts of the Protectorate and Basutoland. It is intended to do so at a later date.

3. The present report is concerned with the affairs of the Bechuanaland Protectorate and Swaziland and no comments here offered are meant to apply to the position of Basutoland, which the Conference has not as yet studied.

4. Dr. G. v.d.w. de Kock, Deputy Director of Veterinary Services, acted for Dr. Viljoen, who was detained in Pretoria, during the tour of Bechuanaland and part of Swaziland.

5. The main purposes for which the Conference was established was set out as follows in the joint statement issued by the Secretary of State for Dominion Affairs and the Prime Minister of the Union: "to study openings for co-operation between the Union Government and the Administrations in matters affecting the development of the Territories and to consider any matters of joint concern to the Union and the Territories such as prevention and control of animal diseases, marketing of produce, prevention of bubonic plague, etc."

6. On examining the existing situation the Conference found that a very considerable measure of co-operation is already in existence. The services of many of the established institutions and organizations in the Union are available to the Territories either free or at cost price and, although no extra cost to the Union Government may be involved, the advantage to the Territories of not having to create separate organizations for these purposes is considerable.

7. A brief resumé is given below of the more important aspects of existing co-operation:

- (a) the services of Union Judges are occasionally made available to take the Sessions of the High Courts of the Territories free of cost except as regards transport allowances;
- (b) there is close co-operation between the police forces of the Union and the Territories in regard to training European ranks, classification, records, crime detention, arms and farriery services;
- (c) use is made of the Union prison system for refractory long sentence prisoners and of Union reformatories for juveniles from the Territories at the cost of the Territory concerned;

- (d) the collection of customs duties is under control of the Union Department in accordance with the terms of the Customs Convention;
- (e) on the Witwatersrand the Territories have their own tax collection agency; elsewhere reciprocal arrangements exist whereby natives may pay their tax in their country of origin irrespective of where they are working and monies received by officers of the Union Government and the two Territories for this purpose are forwarded to the proper quarter;
- (f) technical services of geologists, engineers, educationalists and other scientific workers, particularly in the field of agriculture, have from time to time been placed at the disposal of the Territories by Union Departments;
- (g) there is close co-operation in education and many scholars, both European and Native, receive their education in the higher standards in Union schools, paying the ordinary fees;
- (h) the Union provides a ready market for native labour to the advantage of both the Union and the Territories. The money so earned is largely spent on Union products and manufactured goods;
- (i) there is close co-operation between the Control Boards in the Union and the producers of the products under their control in the Territories, the latter having in some cases representatives either in an advisory capacity or as full members on the Boards;
- (j) the Territories to a large extent derive their supplies of vaccines, sera and medicines for animal diseases from Onderstepoort, and for human diseases from the S.A. Institute for Medical Research, Consultation on problems of common scientific interest takes place between the officers of the Territories and the scientific staffs at these institutions;
- (k) there is a common policy of locust control; and in the case of the Bechuanaland Protectorate the cost of control measures undertaken in areas bordering on the Union is shared by the two Governments;
- (l) there is co-operation on common problems of agriculture like seed selection, eradication of noxious weeds, etc.;
- (m) the Railway and Airway Services of Bechuanaland and road motor services of Swaziland are controlled by the South African Railways, while the Union Post Office administers the postal and telegraphic services of Swaziland and controls the posts (but not the telegraphs) of Bechuanaland;
- (n) dangerous mental patients are accommodated in the institutions of the Union at the cost of the Territories;
- (o) Proclamations, Government Notices, etc., relating to the Territories are printed in the High Commissioner's Gazette by the Government Printer, Pretoria, at the expense of His Majesty's Government in the United Kingdom; Notices issued by the Administrations of the Territories at the expense of the Territory concerned.

8. In the course of their investigations the members of the Conference came across other matters not involving new departures in public policy in respect of which co-operation can be extended by establishing the necessary contacts between the officers administering the Territories and Union Government departments. Steps have been taken by the Union members to establish the necessary contacts, and it is not considered necessary to swell the



volume of this report by enumerating what are purely matters of detail like school curricula, maintenance of border fences, burning of fire-breaks and matters of like order and of mutual interest or benefit.

9. We proceed to report on certain wider questions of co-operation. As these involve important matters of public policy, we confine ourselves to the task of drawing attention to possibilities of co-operation for the information of the respective Governments and their decision on what action is possible at this stage.

#### *The essential Economic Unity of the Territories and the Union*

10. We were impressed by the fact that in the economic sphere, the Union and the Territories form an essential unity of interest. The Union is the natural, if not the only, market for the products of the Territories, with comparatively few exceptions, and the Territories provide a valuable market for the manufactures of the Union. In the present state of international trade the Territories would have great difficulty in finding remunerative markets elsewhere, should the Union markets be closed to them. This is particularly the case with cattle, the principal product of Bechuanaland and Swaziland (an aspect of the matter dealt with in detail later). The Union also provides a market for their surplus labour resources, which in turn are, at least for the immediate future, of considerable value to the Union for its own developmental work.

#### *Development of Territories*

11. While, however, the Territories have a market in the Union for the bulk of their products and for their labour, developmental work has to some extent been retarded by political boundaries and limited financial resources. We have in mind such things as railway development in Swaziland, roads, bridges, soil erosion works, geological survey and education in respect of all of which the position in these two Territories is backward as compared with similar areas in the Union. We are aware that closer co-operation in these matters would involve important questions of policy, notably the expenditure of monies by the Union Government in Territories not under its jurisdiction. We therefore refer to them without examining them in detail.

12. It must be observed, however, that both Territories with the aid of grants and loans from the Imperial Treasury and the Colonial Development Fund have in recent years undertaken developmental work on a considerable scale. The extent of the financial assistance rendered by the Imperial Government and the nature of the schemes of development already undertaken are set out in the schedules attached.

13. It is particularly noticeable in Swaziland that the absence of railways retards development. Products have to be carried over long distances by motor transport. An investigation by the South African Railways into the technical and economic aspects of building a railway through this Territory might open up a possibility of fruitful co-operation.

14. The position in regard to soil erosion in certain areas calls for attention. At its present stage this evil could probably be combated at comparatively slight cost, while if it is allowed to develop, the cost of remedial measures in the future will be largely increased. A grant has been provided from Colonial Development Funds for the construction of dams and small anti-erosion works in Swaziland. An offer of financial assistance was made by the Union Government a few years ago but not accepted by the Territories.

15. In connexion, however, with the scientific and technical aspect of the developmental work carried on in the Territories there is scope for increasing the measure of co-operation that already exists (*see* paragraph 7 (f) above).

16. The Administrations of the Territories frequently require scientific and technical advice. The volume of the work is not, however, large enough, and the diversity is too great to warrant the full-time employment of specialists in these fields even by the three Territories acting in conjunction.

17. On the other hand, the Territories themselves are engaged on scientific work, e.g., in the fields of veterinary science and pasture research, on lines parallel with or complementary to similar work carried on in the Union.

18. In such matters as pasture research, the planning and construction of access roads and bridges, irrigation, mining problems and inspection of mines, geological and hydrographic surveys, research into agricultural, veterinary and public health problems, educational problems, etc., there is opportunity for close co-operation by way of advice, loan of technical officers or of equipment and machinery, and of comparison of results already obtained and point-planning of parallel investigations.

19. It is suggested that when planning future schemes of development the Administrations of the Territories might in the first place approach the Union Departments concerned with a view to ascertaining to what extent advice or assistance in the form indicated above would be available. Whenever necessary, provisional arrangements for assistance would be subject to confirmation by the respective Governments.

#### *Cattle*

20. Finally we come to the twin problem, on which there is the largest measure of mutual concern, that of cattle markets and cattle disease. The Union, Bechuanaland Protectorate and Swaziland are all keenly interested in the economic and veterinary aspects of cattle raising and to this list must be added South-West Africa and Southern Rhodesia.

21. We shall discuss the cattle problem first in its economic and secondly in its veterinary aspect.

#### *The Economic Aspect of the Cattle Problem*

22. Bechuanaland and Swaziland (as well as South-West Africa and Southern Rhodesia) all produce cattle and products in excess of their own power of absorption. In accordance with bilateral *ad hoc* arrangements with each of these countries the Union provides to a greater or less extent a market for their surplus cattle.

The Union market is, however, limited and during the past decade the cattle production in the Union and South-West Africa (which has free access to the Union market) has, moreover, reached the stage where it is generally sufficient to supply local market requirements. Union cattle breeders have, therefore, a very keen interest in the market not being flooded with supplies from all the possible sources to an extent which would depress prices to an unremunerative level. This interest is shared by the non-Union cattle raisers of all Southern Africa to the extent to which they are enabled to share in the Union market.

23. The two outstanding facts of the cattle position are as follows:—

- (a) the countries South of the Zambesi and the Kunene produce a surplus of cattle over their joint requirements;



(b) as a result of the application of elaborate control machinery and the removal of the surplus through the payment of subsidies and bounties, the price-level of meat and dairy products in the Union, particularly on the Johannesburg market, is higher than that of the export market.

24. There are two methods in which the problems flowing from this situation can be met, viz.:—

(a) a policy might be followed which would pool the more remunerative prices derived from the Union market with the lower prices derived overseas and distribute the proceeds fairly among all interested parties, or

(b) a policy of leaving to each territory the solution of its own cattle problem subject to such arrangements as the non-Union territories can make to secure a share in the Union market.

25. The latter has been the policy hitherto followed. It has gradually evolved from a time when the Union could take all surplus of neighbouring territories. As this surplus increased and Union production did the same, restrictions were placed on the free movement of cattle into the Union.

26. There are certain manifest disadvantages attaching to this method of dealing with the problem, the most important of which are as follows:—

(a) It is not easy of effective administration. The lengthy land-borders of the Union make evasion easy and cattle smuggling has become a notorious evil, difficult to control except at considerable cost in non-productive activities of police and border-guards.

The picturesque phrase "smuggling-parity" in relation to the price of cattle shows how smuggling has come to be regarded as a settled order of things in the Bechuanaland Protectorate.

It is frequently alleged that there is a "cattle racket" with powerful financial backing and that pressure is exerted on any Union border-guards who are found to take a too conscientious view of their duties.

(b) Smuggling greatly increases the difficulties of effective disease-control.

(c) Measures taken to restrict access to Union markets cause unpleasantness and bad-neighbourliness among Territories which have many common interests. In Bechuanaland the European farms of the Tuli Block have practically become derelict, and this is ascribed primarily to the restrictions of access of cattle to the Union.

(d) It is difficult for the Territories with a small revenue to take the only practical and effective step of subsidizing export in order to dispose of their surplus cattle which cannot find an entrance to the Union market. For this reason the abattoir and cold storage plant at Lobatsi in Bechuanaland has worked only intermittently. Very little can therefore be done to relieve the pressure of surplus cattle in such Territories and the pressure on the Union market continues.

(e) Even with the Policy of restriction, it has become necessary for the Union to come to the aid of its neighbours by subsidizing their export. This is done in respect of the subsidy on railway rates for cattle and beef destined for export overseas from Rhodesia and Bechuanaland, while a subsidy is paid in respect of the export of dairy products from South-West Africa to divert the surplus from the Union market.

(f) Uniformity of quality; volume of exports and continuity of supplies are not facilitated where each state organizes the export of its surplus individually.

27. On the other hand certain advantages may be expected to accrue to all concerned from the adoption of the alternative policy set out in paragraph 24 (a). The most important of these are:—

(a) Better disease-control.

(b) Saving of the costs incidental to restriction.

(c) The possibility of inaugurating a long-range cattle policy aimed at such objectives as the rearing of store-cattle in suitable areas for fattening in the grain areas, the differentiation between dairy and beef areas, the concentration in suitable areas on the rearing of animals conforming to the requirements of the export market, and the spreading of the necessarily heavy overhead costs of export over a larger volume of exports.

28. While it would seem that the policy outlined in paragraph 24 (a) has many advantages in dealing with the surplus cattle problem of the Territories, the following considerations will have to be borne in mind when deciding on the policy to be pursued:—

(a) The development of cattle production in the Union and South-West Africa as described in paragraph 23 limits the power of absorption of the Union markets for cattle from other South African territories. Moreover, as a result of the comprehensive measures at present being applied for the improvement of the beef industry, as well as the natural pastures, the problem of disposing of any surplus is likely to become even more acute in the future.

(b) It will be a matter for consideration of the Territories whether they can and desire to impose the levies or grant the bounties or subsidies required to cope with the problem of surplus cattle.

(c) A further condition is a uniform policy of disease control, a matter to which we refer later.

#### *The Veterinary Aspect of the Cattle Problem*

29. The unity of interest of all Southern Africa in eradication of cattle disease is plain. If, for example, foot and mouth disease were to become enzootic in Southern Africa the restrictions which different overseas countries impose on imports, not necessarily only of animal origin, from countries where this disease is prevalent, would have a most damaging effect on the trade of all Southern African states.

Closer co-operation between the Union and the High Commission Territories in this respect would redound to the benefit of all.

30. As the sole object of veterinary policy both in the Union and in the Territories is the control and eradication of animal diseases, a large measure of co-operation is possible. This should aim at a uniform veterinary policy, uniform veterinary standards and as far as possible methods of disease control.

31. As the Union has not only the largest aggregate interest in disease control, but also the largest and best equipped laboratories and the most extensive trained staff, it might take the lead in inaugurating an investigation, in conjunction with the veterinary officers of the Territories, of the stock disease and veterinary control position in Bechuanaland and Swaziland. Such an investigation would be a valuable step forward in the direction of closer



co-operation in this field of mutual interest, and should also assist in smoothing difficulties which result from veterinary restriction where the disease position renders such restrictions necessary.

32. In conclusion we would point out that the amelioration of the position in regard to cattle would in our opinion do more towards the development and improvement of conditions in the Bechuanaland Protectorate and Swaziland than any of the other measures considered by the Conference. One might almost say of Bechuanaland that ranching is the only economic development which is now above the horizon. While the Union can be of assistance to the Territories in the development of their resources, it is particularly in the development of the cattle industry that such assistance would be of vital concern to the peoples of Bechuanaland and Swaziland.

E. C. RICHARDS,  
*Chairman.*

C. N. A. CLARKE,

C. L. BRUTON,

P. R. VILJOEN,

D. L. SMIT,

J. E. HOLLOWAY,  
*Members.*

#### (Annexure to the Report)

#### THE BECHUANALAND PROTECTORATE

#### Parliamentary Grants in Aid received from the Imperial Treasury

1933-34—1938-39

	£
1933-34 ... ..	177,000
1934-35 ... ..	98,000
1935-36 ... ..	50,000
1936-37 ... ..	60,000
1937-38 ... ..	25,000
1938-39 ... ..	*50,000
	<b>£460,000</b>

\* Amount approved in estimates, of which probably only £30,000 will be required.

#### List of Schemes Financed by the Colonial Development Fund

Scheme	Amount Approved	Date Commenced	Date Completed
	£ s. d.		
<b>MEDICAL</b>			
Additions to Hospitals ... ..	3,770 0 0	April, 1932 ...	March, 1934.
Francistown Hospital ... ..	4,000 0 0	October, 1934...	July, 1935.
New Hospital, Maun ... ..	3,500 0 0	October, 1935...	February, 1937.
New Hospital, Tswapong ... ..	1,150 0 0	May, 1937 ...	March, 1938.
New Hospital, Tswapong ... ..	350 0 0		
Water supply Tswapong Hospital	1,020 0 0	December, 1935	June, 1938,
Fixed Dispensaries ... ..	9,125 0 0	In progress.	
<b>AGRICULTURE AND VETERINARY</b>			
Tsetse Fly Investigation ... ..	2,265 6 3	August, 1930 ...	September, 1931.
Demonstration Creamery ... ..	200 0 0	April, 1932 ...	March, 1933.
Mutton Improvement ... ..	2,000 0 0	February, 1935	In progress.
Cattle Improvement ... ..	7,000 0 0	June, 1935 ...	In progress.
Cattle Improvement (Additional)	5,450 0 0	January, 1939...	In progress.
Pasture Research ... ..	4,750 0 0	April, 1935 ...	In progress.
Improving of methods of pre- paring Hides and Skins ... ..	2,000 0 0	December, 1935	In progress.
Loan for Dairy Machinery ... ..	1,000 0 0	January, 1935...	Loan repaid Sep- tember, 1938, to C.D.F.
Dairy Industry ... ..	500 0 0	July, 1935 ...	June, 1936.
Pork and Bacon Industry ... ..	694 0 0	July, 1935 ...	December, 1936.
Pig Breeding ... ..	564 0 0	December, 1938	In progress.
Poultry Industry ... ..	1,083 0 0	June, 1935 ...	December, 1936.
Karakul Sheep ... ..	3,680 0 0	February, 1937	In progress.
<b>WATER DEVELOPMENT</b>			
Preparation of Water Schemes ...	894 11 11	August, 1930 ...	February, 1931.
Ngamiland Waterways ... ..	400 0 0	November, 1933	March, 1937.
Ngamiland Waterways ... ..	3,600 0 0	November, 1933	March, 1937.
Ngamiland Waterways ... ..	8,000 0 0	April, 1937 ...	July, 1938.
Water Development ... ..	25,300 0 0	August, 1935 ...	April, 1937.
Water Development ... ..	114,000 0 0	May, 1937 ...	In progress.
Ngamiland Waterways (Clearing of Taoghe) ... ..	3,500 0 0	January, 1939...	In progress.
<b>COMMUNICATION</b>			
Walvis Bay Railway Survey ... ..	2,002 4 0	March, 1932 ...	September, 1932.
Low Level Bridges ... ..	12,750 0 0	August, 1935 ...	In progress.
Road Construction Machinery ...	690 0 0	August, 1935 ...	Completed.
Road Construction ... ..	58,000 0 0	May, 1937 ...	In progress.
<b>MISCELLANEOUS</b>			
Economic Mission ... ..	1,640 0 0	October, 1932...	March, 1933.
Skin and Fur Industry ... ..	4,045 0 0	May, 1936 ...	March, 1937.
Survey of Timber Resources ... ..	2,331 0 0	October, 1936...	September, 1938.
	<b>£291,254 2 2</b>		



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## SWAZILAND

## Statement of Grants-in-Aid, 1928-1938

	£		£
1928-29 ... ..	32,500	1934-35 ... ..	60,000
1929-30 ... ..	32,000	1935-36 ... ..	48,000
1931-32 ... ..	22,000	1936-37 ... ..	32,500
1932-33 ... ..	27,900	1937-38 ... ..	43,000
1933-34 ... ..	28,500		
			<u>£326,400</u>

List of Schemes Supported by Colonial Development Fund  
To 31st March, 1938

Number	Particulars of Schemes	Amount Sanctioned	Remarks
		£ s. d.	
24	Roads, Bridges and Causeways ...	6,937 3 3	Completed.
25	Hlatikulu-Kubuta Telephone Line ...	1,050 16 10	Completed.
26 and 27	Mbabane Hospital and Three V.D. Clinics.	7,386 19 3	Completed.
28	Tobacco Delegation to Union of South Africa.	120 0 0	Completed.
172	Construction of Concrete Dam ...	178 7 4	Completed.
190	Financial Mission ... ..	1,058 0 0	Completed.
191	Water Conservation ... ..	2,988 15 5	Completed.
230	Bremersdorp Water Supply ... ..	8,931 10 11	Completed.
231	Creamery ... ..	6,500 0 0	Completed.
232	Construction of Three Medical Outposts	541 5 3	Completed.
259	Usutu Bridge ... ..	6,874 16 8	Completed.
260	Telephone Exchange ... ..	3,396 11 2	Completed.
311	Cattle Improvement ... ..	6,760 0 0	In progress — to be spread over several years.
312	Extension of Government Hospital, Hlatikulu.	5,750 0 0	Completed.
369	Construction of Bridges... ..	26,450 0 0	In progress.
405	Cattle Dipping Tanks ... ..	7,500 0 0	In progress.
456	Purchase of Road Making Plant ...	5,350 0 0	Completed.
468	Construction of Road Culverts... ..	6,000 0 0	In progress.
472	Water Supplies ... ..	16,000 0 0	In progress.
473	Experimental Farm ... ..	9,500 0 0	£5,500 capital expenditure and recurrent expenditure £800 p.a. for five years.
494	Half cost Black Umbuluzi Bridge ...	600 0 0	In progress.
508	Goedegun Water Supply ... ..	2,000 0 0	In progress.
509	Stegi Water Supply ... ..	1,150 0 0	In progress.
510	Forestry Survey ... ..	150 0 0	Completed.
		<u>£133,174 6 1</u>	

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30. Extract from Official Report, House of Commons,  
4th July 1939

LIEUT.-COMMANDER FLETCHER asked the Secretary of State for Dominion Affairs what is the present position of the negotiations with the Government of the Union of South Africa concerning the transference of the South African Protectorates?

MR. SORENSEN asked the Secretary of State for Dominion Affairs whether he is aware that British-African subjects in Africa and Great Britain view with apprehension the transference of Basutoland, Swaziland, and Bechuanaland to the Union of South Africa; if discussions between the British Government and the South African Government on this matter will be completed before the Summer Recess; when a report is likely to be issued; and whether the wishes and interests of the natives likely to be affected will have prior claim to that of the European settlers or the Union Government?

MR. CREECH JONES asked the Secretary of State for Dominion Affairs whether any recent discussions of an official or unofficial nature have taken place with the Government of the Union of South Africa, on the subject of the transfer of any or all of the High Commission Territories?

MR. PALING asked the Secretary of State for Dominion Affairs the nature of the agreement arrived at between the British Government and the Union of South Africa on the question of the South African Protectorates; and has the consent of the native inhabitants of the Protectorates been obtained to the agreement?

SIR T. INSKIP: It was explained in the joint statement which my right hon. Friend the Secretary of State for the Colonies and General Hertzog made on 29th March last year that it was proposed that His Majesty's Government in the Union of South Africa should issue a memorandum setting forth the terms on which they would propose that the transfer of the government of the High Commission Territories to the Union would take place, if decided upon. I have recently received from the Union Government the draft of the memorandum which they have prepared, but I cannot yet give the date on which the memorandum will be published by the Union Government.

As was indicated in the joint statement to which I have referred, the object of the issue of the memorandum is to enable the inhabitants of the Territories to judge what the position would be in the event of transfer. It has been made clear on several occasions that His Majesty's Government in the United Kingdom would not make any decision in regard to the transfer of the government of the Territories until the inhabitants, native as well as European, have been consulted and that no final conclusion would be reached until Parliament has had an opportunity of expressing its views. There is no question of varying this pledge.

LIEUT.-COMMANDER FLETCHER: Is the right hon. Gentleman aware that assurances have been given not only to the natives of these Protectorates that they shall be consulted, but that their consent must be obtained before transfer takes place? May I ask that he will give the further assurance that this House will be consulted before any such transfer is made?

SIR T. INSKIP: I have already said that in my answer.

MR. POOLE: May I ask in what way the right hon. Gentleman proposes to consult the natives? Does he propose to consult the natives or the native chiefs?

SIR T. INSKIP: Consultations will take place with those whom His Majesty's Government consider are the best qualified to express an opinion.



MR. CREECH JONES: Will the acquiescence of the natives be obtained before transfer is effected? Are we to understand that in the near future further unofficial discussions will take place with the Union Government on this matter?

SIR T. INSKIP: I am not able to say when further discussions will take place with the natives or with their representatives, but I can assure the hon. Member that the fullest consideration will be given to the wishes and interests of the native population.

### 1939

#### 31. Memorandum (prepared in 1939) by His Majesty's Government in the Union of South Africa on the question of the transfer of the Governments of Basutoland, the Bechuanaland Protectorate, and Swaziland to the Union of South Africa

##### (a) European Population

The Union Government believes that the European inhabitants of the Territories of Basutoland, the Bechuanaland Protectorate and Swaziland desire, in the event of the transfer of the Governments of these Territories, or any of them, to enjoy all the rights and privileges and be subject to all the duties and obligations of the European inhabitants of the rest of the Union. These rights should include the right of Parliamentary franchise in accordance with the laws of the Union, and the European owned portions of the Bechuanaland Protectorate and Swaziland should by transfer be placed on exactly the same footing as the European owned land in any other part of the Union. The Government of the Union is willing to adopt such legislative and other measures as may be practicable for the purpose of giving effect to this desire.

##### (b) Officials

Upon transfer the Government of the Union will take over the European and Native officials serving in the Territories in accordance with section 22 of the Schedule to the South Africa Act, 1909, which reads as follows:—

“22. The rights as existing at the date of transfer of officers of the public service employed in any territory shall remain in force.”

##### (c) Native Population

Section 151 of the South Africa Act, 1909, provides that on transfer to the Union of the Government of any Territories belonging to or under the protection of His Majesty and inhabited wholly or in part by Natives, the Governor-General-in-Council may undertake the government of such Territory upon the terms and conditions embodied in the Schedule to the Act.

Upon transfer, His Majesty's Government in the Union of South Africa would institute the system of government outlined in the Schedule to the South Africa Act, 1909, and no departure from the terms of the Schedule is contemplated by His Majesty's said government.

If, however, at any time after transfer, any alteration in the terms of the Schedule should be contemplated by His Majesty's Government in the Union of South Africa in respect of the Territories referred to in the Schedule or of any of them, His Majesty's said Government undertake to consult with His Majesty's Government in the United Kingdom in case the latter should have any observations to offer and give due consideration to such observations before making such alteration.

The powers and status of the Chiefs would continue unchanged, and the existing form of administration would substantially be maintained, except for minor necessary administrative adjustments.

Thus, while at present the legislative power is vested in the High Commissioner, it would, upon transfer, become vested in the Governor-General-in-Council.

At present the administration is exercised by resident commissioners under the direction of the High Commissioner. Upon transfer, the resident commissioners would be appointed by the Governor-General-in-Council and would exercise their administrative functions under the direction of the Prime Minister.

The Prime Minister would be advised on matters of administration and legislation by a Commission of not less than three members, the constitution and functions whereof are dealt with in sections 2-10 of the said Schedule.

It may be desirable to set out here certain advantages which the Natives of the Territories may be expected to gain as a result of transfer to the Union. Before doing so, however, it is perhaps not out of place to draw attention to the fact that in the economic sphere the Union and the Territories have an essential unity of interest. The Union is the natural, if not the only, market for the products of the Territories, and the Territories provide a market for the manufactures of the Union. In the present state of international trade, the Territories would have great difficulty in finding remunerative markets elsewhere if the Union markets should be closed to them. This is particularly the case with cattle, the principal product of the Bechuanaland Protectorate and Swaziland, which have, in spite of the weight restrictions and the controlled market, obtained a remunerative outlet for large numbers of cattle in the Union.

The Union provides also a ready market for the surplus labour of the Territories. During the recent economic depression the Union Government found that while thousands of its own Natives were workless and in a state of semi-starvation, so much so that extensive relief had to be provided, a very large number of Natives from outside the Union were in various types of employment in the Union, particularly in the towns.

As the Union Government's first concern naturally is to its own Natives, and as extra-Union Natives are continually entering the Union in large numbers without permission, a provision was included in Act No. 46 of 1937 making it an offence for any "foreign" Native to enter or for any European to employ such Native in any town within the Union without special permission from the Secretary for Native Affairs. This restriction does not, however, apply to the Natives of the Territories or of South-West Africa, as the future of these areas has thus far been regarded as being more intimately associated with the Union. For the same reason the restriction imposed by the Union's Immigration Laws upon the entry of any person from outside the Union, be he European or Native, have not been applied to the Territories.

Transfer of the control of the Territories to the Union would naturally have the effect of securing to the inhabitants of the Territories for all time the right to be treated as rightful residents of the Union with the same claim as other Natives of the Union to its labour markets, while any questioning of the right of Territorial Natives to enter the Union for purposes of study, on visits, or for any other legitimate reason would cease.

That this is an important question may be judged from the fact that, apart from the Natives on the mines, which in 1938 absorbed 70,511 labourers from the Territories, there are at present approximately 220,000 Natives within the Union who do not belong to it.



None of the Territories can in the long run survive as independent economic units. As has already been pointed out, they are in fact today living largely on the development which has taken place across their borders, and if they did not have the easy access to the Union which they now enjoy, their position would long ago have become impossible.

Already the question has arisen whether the position as it prevails at present can be maintained. The fact that the Territories produce largely for the Union market in competition with the citizens of the Union gives rise from time to time to a demand on the part of Union producers for the raising of tariff barriers against the products of the Territories. Only the transfer of the Territories could permanently ensure to the inhabitants that measure of equal treatment for their products which they at present share with citizens of the Union.

Upon transfer the Territories would become part and parcel of the Union as an economic unit. While the movement of livestock and agricultural produce would, of course, be subject to the veterinary and marketing laws of the Union, there would be no discrimination against the Territories, which would be in the favourable position of occupying their natural place in the economic structure of the Union.

For example, the Bechuanaland Protectorate, as a ranching area, would benefit by the free movement of feeder-cattle to the maize areas of the Union, and Basutoland would be in a position to further develop the production of hard wheats, of which there is a scarcity in the Union.

Gradually, and as the process of economic and general adjustment takes place, the Territories will derive all the benefits which accrue to comparatively undeveloped countries as a result of their closer association with an advanced and progressive state. They would share in the organised activities of the Union, and in the benefits of its far higher stage of economic development. The financial and technical resources of the Union would be extended to their areas, and transport facilities would be increased in order to tap their resources and hasten their development.

Native agricultural schools have been established in the Union. They give instruction in agriculture to Native students, and train Native agricultural demonstrators to teach their people the advantages of improved methods of cultivation and animal husbandry. These facilities would become available to the inhabitants of the Territories.

The Union Government may state that in so far as its knowledge of present conditions enables it to formulate its policy towards the Natives in the event of transfer, its intention is that :—

- (a) The tribal system and the authority of the Chiefs should be maintained; and the Chiefs should continue to receive the allowances hitherto paid to them by the Imperial Government.
- (b) There should be no alienation of any land in Basutoland, nor of any land forming part of the Native reserves in the Bechuanaland Protectorate and Swaziland.
- (c) No Natives should be introduced into Basutoland or the Native reserves of the Bechuanaland Protectorate or Swaziland for settlement without the consent of the inhabitants of the areas concerned.
- (d) The existing educational, medical and other social services, and the schemes for veld reclamation, the combating of soil erosion, the development of agriculture, the improvement of stock, the provision of water supplies and the construction and maintenance of roads and bridges should be continued and extended as circumstances permit.
- (e) The principles laid down in Proclamation No. 2 of 1915 (Swaziland), which makes provision for controlling the purchase by Natives of land in Swaziland and for securing for the benefit of the Swazi land acquired on behalf of the Swazi nation, should be maintained.

## PART II :—Appendices

### APPENDIX I

#### Orders-in-Council and Proclamations establishing British administration in the High Commission Territories

##### BASUTOLAND

##### Proclamation No. 14 of 1868, by the Governor of Cape Colony

(Sir P. WODEHOUSE)

WHEREAS with a view to the restoration of peace and the future maintenance of tranquility and good government on the North Eastern Border of the Colony of the Cape of Good Hope, Her Majesty, THE QUEEN has been graciously pleased to comply with the request made by Moshesh, the Paramount Chief, and other Headmen of the Tribe of the Basutos, that the said Tribe may be admitted into the allegiance of Her Majesty.

And whereas Her Majesty has been further pleased to authorise me to take the necessary steps for giving effect to Her pleasure in the matter:

Now therefore, I do hereby proclaim and declare that from and after the publication hereof, the said Tribe of the Basutos shall be, and shall be taken to be, for all intents and purposes, British Subjects; and the Territory of the said Tribe shall be, and shall be taken to be British Territory. And I hereby require all Her Majesty's subjects in South Africa to take notice of this my Proclamation accordingly.

GOD SAVE THE QUEEN!

Given under the Public Seal of the Settlement of the Cape of Good Hope, this 12th day of March, 1868.

(Signed) P. E. WODEHOUSE,  
Governor.

By command of His Excellency the Governor.

(Signed) R. SOUTHEY,  
Colonial Secretary.



## BASUTOLAND

Order-in-Council, 2nd February, 1884

At the Court at Osborne House, Isle of Wight

The 2nd day of February, 1884

Present:

THE QUEEN'S MOST EXCELLENT MAJESTY

Lord President

Secretary, Sir William Vernon Harcourt—Mr. Gladstone

WHEREAS certain territory in South Africa, inhabited by the tribe of people called Basutos, and known as Basutoland, did in the year 1868, become part of Her Majesty's Dominions, and under the direct authority of Her Majesty exercised through Her High Commissioner.

And whereas Her Majesty, by Order in Council, dated the 3rd day of November 1871, was pleased to declare Her special confirmation of an Act passed by the Governor of the Cape of Good Hope, with the advice and consent of the Legislative Council and House of Assembly thereof, entitled "An Act for the Annexation to the Colony of the Cape of Good Hope of the territory inhabited by the tribe of people called Basutos".

And whereas the said Legislative Council and House of Assembly have passed a Bill repealing the said Act, and entitled "An Act to provide for the Disannexation of Basutoland from the Colony of the Cape of Good Hope", and the said Bill has been duly reserved for the signification of Her Majesty's pleasure thereon.

And whereas it is provided by the law of the Colony that no Bill so reserved shall have any force of authority within the Colony until the Governor shall signify by speech or message to the said Council and Assembly, or by Proclamation, that such Bill has been laid before Her Majesty in Council, and that Her Majesty has been pleased to assent to the same.

And whereas it is expedient that Her Majesty in Council should assent to the said Bill, and that provision be made for the future administration of Basutoland.

Now, therefore, Her Majesty is pleased, by and with the advice of Her Privy Council, to declare Her assent to the said Bill.

### PART II

Her Majesty is further pleased to order, and it is hereby ordered as follows:

So soon as Part II of this Order takes effect, Basutoland shall again come under the direct authority of Her Majesty and the person for the time being exercising the functions of Her Majesty's High Commissioner for South Africa\* (hereinafter styled the High Commissioner) shall have and may exercise, in the name and on behalf of Her Majesty, all legislative and executive authority in and over the territory of Basutoland.

\* Under the Basutoland Order-in-Council of 20th December, 1934, the High Commissioner's title was changed to "High Commissioner for Basutoland, The Bechuanaland Protectorate and Swaziland".

The High Commissioner is hereby empowered and required, in the name and on behalf of Her Majesty, to make by proclamation such laws as may to him appear necessary for the peace, order, and good government of the said territory, and to appoint such Resident or Deputy or Assistant Commissioners, Officers, and Magistrates, and generally to take such measures, and to do all such matters and things as he may think expedient for the like peace, order and good government.

All laws in force in Basutoland at the time when this Order takes effect shall continue in operation until repealed or altered by proclamation of the High Commissioner, and all powers and authorities which by such laws are vested in the Governor and officers appointed by him shall be vested in and exercisable by the High Commissioner and Officers appointed by him.

The Governor of the Colony of the Cape of Good Hope shall cause this Order to be proclaimed at such place or places as he shall think fit, and upon such proclamation Part II of this Order shall take effect and come into operation.

And the Right Honourable the Earl of Derby, one of Her Majesty's Principal Secretaries of State, is to give the necessary directions herein accordingly.

C. L. PEEL.

## BECHUANALAND PROTECTORATE

Proclamation No. 1 (British Bechuanaland) of 30th September, 1885

### PROCLAMATION

By His Excellency the Right Honourable Sir HERCULES GEORGE ROBERT ROBINSON, &C., &C.

WHEREAS Her Majesty the Queen has established a British Protectorate over the Territory known as Bechuanaland and the Kalahari, extending over the parts of South Africa situate West of the boundary of the South African Republic, North of the Colony of the Cape of Good Hope, East of the 20th Meridian of East Longitude, and South of the 22nd parallel of South Latitude, and not within the jurisdiction of any civilised power; and whereas in the interests of peace, order and good government it has been found necessary that Her Majesty's Sovereignty should be proclaimed over such portion of the said Protectorate as is hereinafter defined; and whereas Her Majesty has been pleased to authorise me to take the necessary steps for giving effect to Her pleasure in the matter:—

Now, therefore, I do hereby proclaim, declare and make known, that from and after the publication hereof that portion of the aforesaid Protectorate which is bounded on the East by the South African Republic, on the South by the Colony of the Cape of Good Hope, on the West by the Molopo River, and on the North by the said Molopo River to its junction with the Ramathlabama Spruit, and thence by the said Spruit to the frontier of the South African Republic, shall be and shall be taken to be British Territory under the name of British Bechuanaland.

And I do further make known that the remainder of the aforesaid Territory not included within the Boundaries of British Bechuanaland, shall continue to be as at present under Her Majesty's Protection.

And I hereby require all Her Majesty's subjects in South Africa to take notice of this my Proclamation, and to guide themselves accordingly.

\* \* \*



## BECHUANALAND PROTECTORATE

Order-in-Council, 9th May, 1891\*

At the Court at Windsor

The 9th day of May, 1891

Present,

THE QUEEN'S MOST EXCELLENT MAJESTY,

Lord President,

Lord Steward,

Earl of Coventry.

WHEREAS the territories of South Africa situate within the limits of this Order, as hereinafter described, are under the protection of Her Majesty the Queen :

And whereas by treaty, grant, usage, sufferance, and other lawful means Her Majesty has power and jurisdiction in the said territories :

Now therefore Her Majesty, by virtue and in exercise of the powers by the Foreign Jurisdiction Act, 1890, or otherwise in Her Majesty vested, is pleased by and with the advice of Her Privy Council to order, and it is hereby ordered as follows :—

1. The limits of this Order are :—the parts of South Africa bounded by British Bechuanaland, the German Protectorate, the Rivers Chobe and Zambesi, the Portuguese Possessions, and the South African Republic.

2. The High Commissioner may on Her Majesty's behalf exercise all powers and jurisdiction which Her Majesty, at any time before or after the date of this Order had or may have within the limits of this Order, and to that end may take or cause to be taken all such measures, and may do or cause to be done all such matters and things within the limits of this Order as are lawful and as in the interest of Her Majesty's service he may think expedient, subject to such Instructions as he may from time to time receive from Her Majesty or through a Secretary of State.

3. The High Commissioner may appoint so many fit persons as in the interest of Her Majesty's Service he may think necessary to be Deputy Commissioners, or Resident Commissioners, or Assistant Commissioners, or Judges, Magistrates, or other officers, and may define from time to time the districts within which such officers shall respectively discharge their functions.

Every such officer may exercise such powers and authorities as the High Commissioner may assigne to him, subject nevertheless to such directions and instructions as the High Commissioner may from time to time think fit to give him. The appointment of such officers shall not abridge, alter, or affect the right of the High Commissioner to execute and discharge all the powers and authorities hereby conferred upon him.

The High Commissioner may remove any officer so appointed.

4. In the exercise of the powers and authorities hereby conferred upon him, the High Commissioner may, amongst other things, from time to time by Proclamation provide for the administration of justice, the raising of

revenue, and generally for the peace, order and good government of all persons within the limits of this Order, including the prohibition and punishment of acts tending to disturb the public peace.

The High Commissioner in issuing such Proclamations shall respect any native laws or customs by which the civil relations of any native Chiefs, tribes or populations under Her Majesty's protection are now regulated, except so far as the same may be incompatible with the due exercise of Her Majesty's power and jurisdiction.

5. Every Proclamation of the High Commissioner shall be published in the Gazette, and shall from and after the date of such publication, or from and after such other date as may be mentioned in such Proclamation, and thereafter until disallowed by Her Majesty or repealed or modified by any subsequent Proclamation, have effect as if contained in this Order.

6. Her Majesty may disallow any such Proclamation wholly or in part, and may signify such disallowance through a Secretary of State, and upon such disallowance being publicly notified by the High Commissioner in the Gazette the provisions so disallowed shall, from and after a date to be mentioned in such notification, cease to have effect, but without prejudice to anything theretofore lawfully done thereunder.

7. The Courts of British Bechuanaland shall have in respect of matters occurring within the limits of this Order the same jurisdiction civil and criminal, original and appellate, as they respectively possess from time to time in respect of matters occurring within British Bechuanaland, and the judgments, decrees, orders, and sentences of any such Court made or given in the exercise of the jurisdiction hereby conferred may be enforced and executed, appeals therefrom may be had and prosecuted in the same way as if the judgment, decree, order, or sentence had been made or given under the ordinary jurisdiction of the Court.

But the jurisdiction hereby conferred shall only be exercised by such Courts, and in such manner and to such extent, as the Governor of British Bechuanaland shall by Proclamation from time to time direct.

8. Subject to any Proclamation made under this Order any jurisdiction exercisable otherwise than under this Order, whether by virtue of any Statute or Order in Council, or of any Treaty, or otherwise, and whether exercisable by Her Majesty, or by any person on Her behalf, or by any Colonial or other Court, or under any Commission, or under any Charter granted by Her Majesty, shall remain in full force.

9. Judicial notice shall be taken of this Order, and of the commencement thereof, and of any Proclamation made under this Order, and published in the Gazette, and of any Treaties affecting the territories within the limits of this Order, and published in the Gazette, or contained in papers presented to both Houses of Parliament by command of Her Majesty.

10. This Order shall be published in the Gazette, and shall thereupon commence and come into operation ; and the High Commissioner shall give directions for the publication of this Order at such places, and in such manner, and for such time or times as he thinks proper for giving due publicity thereto within the limits of this Order.

11. The Orders in Council of the 27th day of January, 1885, for the establishment of Civil and Criminal Jurisdiction in Bechuanaland, and of the 30th day of June, 1890, providing for the exercise of Her Majesty's Jurisdiction in certain Territories in South Africa, shall continue in force until the commencement of this Order and be thereupon revoked, but without prejudice to anything lawfully done thereunder, and any Proclamation

\* As amended by Orders-in-Council of 30th July, 1891 and 18th October, 1909.



theretofore issued under the said Orders shall continue in operation until repealed or altered by any Proclamation of the High Commissioner under this Order.

12. Her Majesty may from time to time revoke, alter, add to, or amend this Order.

13. In this Order, unless the subject or context otherwise requires—

“Her Majesty” includes Her Majesty’s heirs and successors.

“Secretary of State” means one of Her Majesty’s Principal Secretaries of State.

“High Commissioner” means Her Majesty’s High Commissioner for the time being for South Africa.\*

“Treaty” includes any existing or future Treaty, Convention, or agreement between Her Majesty and any civilized Power, or any native tribe, people, Chief, or King, and any Regulation appended to any such Treaty, Convention, or Agreement.

“Gazette” means any official Gazette published by authority of the High Commissioner, and until such Gazette is instituted, means the Cape of Good Hope Government Gazette.

C. L. PEEL.

## SWAZILAND

### Order-in-Council, 25th June, 1903

At the Court at Buckingham Palace,  
the 25th day of June, 1903

Present:

### THE KING’S MOST EXCELLENT MAJESTY IN COUNCIL

WHEREAS the Government of the late South African Republic exercised rights and powers of protection, legislation, jurisdiction, and administration in and over the territory known as Swaziland:

And whereas the late South African Republic was conquered by His Majesty’s Forces and was annexed to and now forms part of His Majesty’s Dominions and provision has been made for the government thereof as one of His Majesty’s Colonies under the name of the Transvaal:

And whereas all the rights and powers of the late South African Republic with respect to Swaziland have, by virtue of the conquest and annexation of the said South African Republic passed to His Majesty, and His Majesty has by treaty, capitulation, grant, usage, sufferance and other lawful means, power and jurisdiction in Swaziland:

Now, therefore, His Majesty, by virtue of the powers by the Foreign Jurisdiction Act, 1890, or otherwise in His Majesty vested, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered as follows:—

I. This Order may be cited as the Swaziland Order in Council, 1903.

\* Under the Bechuanaland Protectorate Order-in-Council of 20th December, 1934, the High Commissioner’s title was changed to “High Commissioner for Basutoland, the Bechuanaland Protectorate, and Swaziland”.

II. In this Order, unless the contrary appears, “Swaziland” means the territory known by that name bounded on the North, the West and the South by the Transvaal, and on the East by the Colony of Natal and the Portuguese territories. “His Majesty” includes His Majesty’s heirs and successors. “Secretary of State” means one of His Majesty’s Principal Secretaries of State. “Governor” means the person for the time being administering the Government of the Transvaal as Governor thereof. “Gazette” means the Transvaal Government Gazette.

III. The Governor of the Transvaal may, on His Majesty’s behalf, exercise all powers and jurisdiction which His Majesty, at any time before or after the date of this Order, had, or may have, within Swaziland, and to that end may take or cause to be taken all such measures, and may do or cause to be done all such matters and things therein as are lawful and as in the interest of His Majesty’s service he may think expedient, subject to such instructions as he may from time to time receive from His Majesty, or through a Secretary of State.

IV. The Governor may appoint a Resident Commissioner and so many fit persons as, in the interest of His Majesty’s service, he may think necessary to be Assistant Commissioners, Judges, Magistrates, or other Officers, and may define from time to time the districts within which such Officers shall respectively discharge their functions.

Every such Officer may exercise such powers and authorities as the Governor may assign to him, subject nevertheless to such directions and instructions as the Governor may from time to time think fit to give him. The appointment of such Officers shall not abridge, alter, or affect the right of the Governor to execute and discharge all the powers and authorities hereby conferred upon him.

The Governor may remove any Officer so appointed.

V. In the exercise of the powers and authorities hereby conferred upon him, the Governor may, amongst other things, from time to time by Proclamation, provide for the administration of justice, the raising of revenue, and generally for the peace, order, and good government of Swaziland, and of all persons therein, including the prohibition and punishment of acts tending to disturb the public peace.

The Governor, in issuing such Proclamations shall respect any native laws by which the civil relations of any native chiefs, tribes, or populations under His Majesty’s protection are now regulated, except so far as the same may be incompatible with the due exercise of His Majesty’s power and jurisdiction, or clearly injurious to the welfare of the said natives.

VI.\* Every Proclamation of the Governor shall be published in the Gazette, and shall from and after a date to be mentioned in such Proclamation, and thereafter until disallowed by His Majesty or repealed or modified by any subsequent Proclamation, have effect as if contained in this Order, and the Governor shall take such measures as he thinks proper for giving due publicity thereto within Swaziland.

\* This section was subsequently amended by Order-in-Council of 18th October, 1909, as follows:

6. Every Proclamation of the High Commissioner shall be published in the Gazette, and shall from and after the date of such publication or from and after such other date as may be mentioned in such Proclamation, and thereafter until disallowed by His Majesty or repealed or modified by any subsequent Proclamation have effect as if contained in this Order, and the High Commissioner shall take such measures as he thinks proper for giving due publicity thereto within Swaziland.



VII. His Majesty may disallow any such Proclamation wholly or in part, and may signify such disallowance by Order in Council or through a Secretary of State, and upon such disallowance being notified in the Gazette, the provisions so disallowed shall from and after a date to be mentioned in such notification, cease to have effect, but without prejudice to anything theretofore lawfully done thereunder. Due notification shall be publicly made by the Governor within Swaziland of the disallowance of any such Proclamation.

VIII. The Governor shall use the Public Seal of the Transvaal for sealing all things whatsoever relating to Swaziland that are required to be under Public Seal.

IX. The Governor may as he shall see occasion, when any crime has been committed within Swaziland, or for which the offender may be tried therein, grant a pardon, in His Majesty's name to any accomplice, not being the actual perpetrator of such crime, who shall give such information and evidence as shall lead to the apprehension and conviction of the principal offender; and further, may grant to any offender convicted of any crime in any court or before any Judge Justice Magistrate or other Officer within Swaziland a pardon, either free or subject to lawful conditions, or any respite of the execution of the sentence of any such offender, for such period as to the Governor may seem fit, and may remit any fines, penalties, or forfeitures which may become due and payable.

X. Any revenues which may be collected in or in respect of Swaziland shall be paid into the Treasury of the Transvaal, and all expenditure incurred under and in accordance with the provisions of this Order shall be paid out of the revenues of the Transvaal.

XI. This Order shall be published in the Gazette, and shall thereupon come into operation, and the Governor shall give directions for the publication of this Order at such places, and in such manner and for such time or times as he thinks proper for giving due publicity thereto within Swaziland.

XII. His Majesty may from time to time revoke, alter, add to, or amend this Order.

And the Right Honourable Joseph Chamberlain, one of His Majesty's Principal Secretaries of State, is to give the necessary directions herein accordingly.

A. W. FITZROY.

## SWAZILAND

### Order-in-Council, 1st December, 1906

At the Court at Sandringham House,

The 1st day of December, 1906

Present:

THE KING's MOST EXCELLENT MAJESTY

Lord President  
Earl of Elgin

Lord Ribblesdale  
Sir Dighton Probyn

WHEREAS by an Order of His Majesty in Council bearing date the 25th day of June, 1903, and known as "The Swaziland Order in Council, 1903", His Majesty was pleased to confer upon the Governor of the Transvaal power and authority in and over the territory of Swaziland as defined in the said Order;

And whereas it is expedient that the powers of the said Governor should be transferred to and in future be exercised by His Majesty's High Commissioner for South Africa;\*

Now, therefore, His Majesty is pleased by and with the advice of His Privy Council to order, and it is hereby ordered as follows:—

1. This Order may be cited as "The Swaziland Order in Council, 1906"
2. From and after the commencement of this Order all the powers and authorities by "The Swaziland Order in Council, 1903", or otherwise vested in, and exercised by, the Governor of the Transvaal shall be transferred to, and be exercised by, His Majesty's High Commissioner for South Africa, and the said Order shall be read and construed as though in place of the words "Governor of the Transvaal" and "Governor", wherever the same occur, the words "High Commissioner for South Africa" were substituted therefor.
3. The Gazette referred to in the said Order, and in this Order, shall be the Official Gazette of the High Commissioner for South Africa.
4. For the Public Seal of the Transvaal the seal of the High Commissioner for South Africa shall be substituted.
5. Articles 8 and 10 of the said Order are hereby revoked without prejudice to anything lawfully done thereunder.
6. This Order shall be published in the Gazette, and shall thereupon commence and come into operation, and the High Commissioner shall give directions for the publication of this Order at such places and in such manner and for such time or times as he thinks proper for giving due publicity thereto within Swaziland.
7. His Majesty may from time to time revoke, alter, add to, or amend this Order.

And the Right Honourable the Earl of Elgin, K.G., one of His Majesty's Principal Secretaries of State, is to give the necessary directions herein accordingly.

A. W. FITZROY.

\*Under the Swaziland Order-in-Council of 20th December, 1934, the High Commissioner's title was changed to "High Commissioner for Basutoland, the Bechuanaland Protectorate and Swaziland".



## APPENDIX II

### Correspondence relating to the National Convention and the Drafting of the South Africa Act

Letter from Sir Henry de Villiers, President of the National Convention, to the High Commissioner (Lord Selborne).

South African National Convention,  
Cape Town, 3 February, 1909.

My Lord,

I HAVE been requested by the South African National Convention to forward to your Excellency, for submission to the Secretary of State for the Colonies, the draft of an Act for the union of the South African Colonies. The Convention having been instructed to consider and report on the most desirable form of union and to prepare a draft constitution, it was considered that these instructions could be most conveniently carried out by embodying the resolutions adopted by the Convention in the form of an Act which would clearly convey to His Majesty's Government and to the different South African Parliaments the exact nature of the constitution recommended by the Convention. As any Act for the union of the South African Colonies will have to be passed by the Imperial Parliament, the Convention considered it right that the draft Act should be communicated to His Majesty's Government before any proposals are laid before the South African Parliaments.

The provisions relating to the Protectorates are dealt with in a Schedule to the Act. You will remember that these provisions were accepted by the Convention after prolonged informal negotiations between your Excellency as High Commissioner and myself as President of the Convention, and that, while the Schedule fairly represents the general principles on which the transfer of the Protectorates, whenever effected, should take place, it was clearly understood that it would be open to His Majesty's Government, as well as to any delegation that may be appointed to confer with His Majesty's Government, to suggest any modifications not inconsistent with those general principles.

The Convention greatly appreciates the goodwill shown towards the Convention and the interest taken in its work by His Majesty's Government and by Your Excellency, as High Commissioner, and sincerely trusts that the result of its labours may be the establishment of a firm and stable union of the British Colonies of South Africa as an integral portion of the British Empire.

I have, &c.,

J. H. DE VILLIERS, President.

\* \* \*

Despatch from Lord Selborne to the Secretary of State for the Colonies (the Earl of Crewe)

High Commissioner's Office,  
Johannesburg.

17th May, 1909.

My Lord,

With reference to my despatch, No. 82, of 8th February, I have the honour to transmit to you six certified copies of the Second Report of the South African National Convention containing the final amendments to the draft South Africa Act agreed to by the Convention in January last.

I have, &c.,

SELBORNE,  
High Commissioner.

\* \* \* \* \*

Extracts\* from the Enclosure to Lord Selborne's despatch of 17th May 1909 (printed above)

SECOND REPORT  
TO THE RESPECTIVE PARLIAMENTS OF THE DELEGATES TO THE  
SOUTH AFRICAN CONVENTION 1908-1909 ;  
WITH COPY OF THE  
DRAFT SOUTH AFRICA CONSTITUTION BILL  
AS FINALLY PASSED BY THE CONVENTION

Certified correct as agreed to by the South African National Convention.  
Bloemfontein,  
11th May, 1909.  
ERNEST F. KILPIN,  
Chief Secretary.

### SOUTH AFRICAN NATIONAL CONVENTION

#### Second Report

I. The delegates to the South African National Convention have the honour to report to the respective Parliaments which appointed them, that at the session recently held at Bloemfontein they have considered the amendments and resolutions adopted by the Parliaments of the several Colonies, as well as other amendments proposed at that session, and have agreed to the following:—

\* \* \* \* \*

#### Schedule

In paragraph 18 to omit "black and white".

II. The Draft Act as finally adopted by the Convention is attached to this Report.†

III. The Convention would further recommend that the delegates to be appointed to proceed to London to confer with the Secretary of State for the Colonies in reference to the passage of the Draft Act through the British Parliament should be authorized *inter alia*:—

(1) to agree to any necessary amendments in the Act which do not involve alterations of any of its principles.

\* The full Report was published as Command Paper No. 4721 of 1909.

† See Appendix V.



- (2) to confer with the Secretary of State for the Colonies as to the Royal Instructions to be issued to the Governor-General.
- (3) to draft for the guidance of the South African Governments rules and regulations for the first elections of senators in accordance with the provisions of the Act.

(Signed)

*Cape of Good Hope :—*

J. H. DE VILLIERS, *President*.  
 JOHN X. MERRIMAN.  
 J. W. SAUER.  
 F. S. MALAN.  
 L. S. JAMESON.  
 T. W. SMARTT.  
 E. H. WALTON.  
 W. E. M. STANFORD.  
 J. W. JAGGER.  
 H. C. VAN HEERDEN.  
 G. H. MAASDORP.  
 J. H. M. BECK.

*Natal :—*

F. R. MOOR.  
 E. M. GREENE.  
 T. HYSLOP.  
 C. J. SMYTHE.  
 T. WATT.

*Transvaal :—*

LOUIS BOTHA.  
 J. C. SMUTS.  
 H. C. HULL.  
 G. H. FARRAR.  
 J. P. FITZPATRICK.  
 H. L. LINDSAY.  
 S. W. BURGER.  
 J. H. DE LA REY.

*Orange River Colony :—*

A. FISCHER.  
 M. T. STEYN *Vice-President*.  
 J. B. M. HERTZOG.  
 C. R. DE WET.  
 A. BROWNE.

*Rhodesia :—*

W. H. MILTON.  
 C. P. J. COGHLAN.

Convention Chambers,  
 Houses of Parliament, Bloemfontein,  
 11th May, 1909.

## APPENDIX III

### Extracts from speeches by United Kingdom Ministers during the Debates on the South Africa Bill, July-August, 1909

#### House of Commons, Second Reading, 16th August

THE UNDER SECRETARY OF STATE FOR THE COLONIES (COLONEL SEELY): Now I come to the schedule. I may say at once, in order to clear away misapprehension which still seems to exist, the schedule of the Bill is purely permissive. It does not bring transfer one hour nearer. In fact, in so far as it goes, I think it will be conclusively proved that it makes it somewhat more difficult. What it does is to lay down certain conditions. If and when the Central South African Government wishes to take over one or more Protectorates, as we anticipated in the Resolution that they would, and if and when His Majesty's Government agree, then we say that certain broad principles—and when I say we, I mean this Government and the South African delegates—which this House holds especially dear, shall be observed. The sale of liquor to natives shall be prohibited. Their lands shall be guaranteed to them. They shall not be taken away. Finally, a form of government is proposed to be set up which will prevent that sudden break from one form of government to another, which all of us here who try to understand this difficult matter know would be so disastrous to native interests. If the Bill passes, as His Majesty's Government hope and trust it may, and it comes into full operation, in the long distant years it will may be when these Protectorates are transferred, instead of having a sudden transfer from the control from the High Commissioner's office, as we have at the present, with a staff that has a special knowledge of native wants and reasonable natives wishes, in fact a transfer to a Government direct from a Parliament without any antecedent machinery, you will have the transition so gradual that I hope and believe that the natives will never know from anything that occurs to them that the transition has been effected. It may be that the very same men will administer exactly the same kind of law in exactly the same kind of way. If that should come about it would be a fortunate solution. It would be carrying out the wishes of this House, expressed in the Resolution which I may be permitted to quote: "The House trusts that His Majesty's Government will welcome the adoption of the provisions calculated to render possible the ultimate inclusion of the whole of British South Africa." [An Hon. Member: "In a Federal Union."] It does not make any difference to the Protectorates whether the Union is federal or unified, except that on all hands it is agreed that the unified form is preferable. It will make that transition, when it comes, as little sudden as it possibly can be, and it may well be hardly perceivable to the natives themselves as far as their own status and rights are concerned.

\* \* \*

THE PRIME MINISTER (MR. ASQUITH): With regard to the Protectorates, the matter, of course, stands on a very different footing. The natives of the Protectorates are not at present subject to the jurisdiction of the Union Government or the Union Parliament. We, on the other hand—I assert this most strongly—stand in the position, in many important respects, of trustees with regard to these natives. We have given them promises and pledges, and we are bound to see that those promises are fulfilled, and that those pledges are not violated. If I thought there was anything in the Bill or in the Schedule which was inconsistent with or would hamper the performance of that solemn Imperial obligation, I should be the first to agree



that this was not a detail but a principle upon which it was impossible for us to make concessions. But I do not think that. I think it has been conceded that the Schedule is intended as a safeguard to the transfer of a Protectorate or territory. Obviously it would in many important respects operate as a safeguard against anything in the way of precipitate action or ill-treatment; but the important point is that you cannot bring any one of these Protectorates or Territories into a state of subordination to the Union Government or the Union Parliament, as Clause 151 shows, unless the King, with the advice of the Privy Council—that is, the Cabinet here—agrees. That is a most proper recognition on the part of the South African communities that the Imperial Government has a voice, and the ultimate voice, in relation to this matter. They do not deny our right in the least; on the contrary, on the very face of the Act, they admit it, and invite us to exercise it. Therefore, as regards the Protectorates, again I do not think the Bill is open to any serious criticism.

\* \* \*

#### Committee Stage, 19th August

THE UNDER SECRETARY OF STATE FOR THE COLONIES: My hon. Friend's Amendment raises two points. The first is, whether the territories are to be transferred immediately, and the second is, when they are to be transferred will regard be had to native wishes in the matter? He does not, as I understand it, wish to press the Amendment to a Division; he wishes to know the intention of the Government as to the meaning of the words. On the first point, I may say at once it is not anticipated that any transfer will take place for some time to come; and, more than that our right to transfer or not remains unimpaired by the provisions of this Bill. The other day I gave, with the sanction of the Prime Minister, an undertaking, so far as we could bind ourselves and our successors, that no such action would be taken without the House of Commons being informed; and I repeat that undertaking now. This statement having been definitely made now, and it being known, as it will be, in South Africa, it might, if we put in the suggested time limit, give the impression that in ten years the transfer would take place. After the statement I have been authorised by the Prime Minister to make, the ten years' time limit might operate in the reverse way it is intended. I do not, therefore, think it would be advisable to put it in now. It would, I know, meet the views of some of my hon. Friends if we were to say the consent of all the natives must be obtained, but, apart from that technical point, I can assure the House that the wishes of the natives in the territories will be most carefully considered before any transfer takes place.

MR. ADKINS: May I ask whether the pledge the hon. Gentleman has just given means that before any such territories are taken over, the House will have an opportunity of expressing their opinion?

COLONEL SEELY: Oh, certainly. They will have an opportunity of discussing, and, if they wish, of disapproving of the action of the Government. So far as my right hon. Friend is concerned, I can make that pledge.

\* \* \*

#### House of Lords, Second Reading, 27th July

THE SECRETARY OF STATE FOR THE COLONIES (THE EARL OF CREWE): That brings me to Clause 151 of the Bill, the clause which enables what are known as the Protectorates possibly at some future time to be transferred to the care of the Union under regulations provided for in a Schedule. The South African Union finds itself in a unique position—a different position

from that of any other part of the Empire. Not only has it got a vast native population within its borders, but just outside its borders, and in one case entirely surrounded by the Union itself, there are whole countries, hitherto directly administered by the Crown, in some cases almost entirely inhabited by natives and carried on under the immemorial tribal system. Those Protectorates have been under our direct administration, and towards them we feel that we have a very solemn duty indeed. They were, speaking generally, not conquered by the arms of Great Britain, but came voluntarily under our control. They feel a profound confidence in the British Government, a confidence which has been largely inspired by able men who from time to time have administered them, and when the question of union became urgent, we had to consider what was the best course to take in view of our honourable obligations towards the Protectorates. We felt bound to regard ourselves as trustees for these bodies of natives, and considering that it does not do for a trustee to hand over his trust to another man, however great his personal confidence may be in him, without a guarantee that the trust itself will be taken over, we decided to ask South Africa to accept the provisions embodied in the Schedule. Some opposition has been raised to the Schedule from two very different quarters. Some think that under no circumstances ought the native Protectorates to be handed over to the Union at all.

Here I may say that we have no desire, we are in no hurry, to hand over these areas to anyone. They are contented, they are not otherwise than prosperous, and we have no desire to part with them; in fact, they have expressed themselves as averse to passing from under the direct administration of the Crown. But we do feel that in any case that suggestion involves an impossibility. It does not seem conceivable that for an indefinite future these areas should remain administered from here and that the new South African Union should have no lot or part in their administration. Nor do I believe, in view of the varying circumstances of these districts, that it is possible to name a time limit and say, at any rate, we will not hand over a particular area for a fixed number of years. That is a course which might have its attractions, but if you do that, it seems to me you cannot combine that provision in the Bill with the existence of the terms embodied in the Schedule, because although we do not desire to hand over the Protectorates, yet the existence of the Schedule undoubtedly contemplates their being possibly handed over at some time to be fixed by agreement.

On the other hand, there are those who contemplate the Protectorates being handed over, but consider that it is not necessary to make any preliminary arrangement with regard to them, and that it would be better to wait and deal with each case as it arises. To my mind there are strong objections to that course. It is extremely advantageous to lay down, as we have laid down in the Schedule, with the full concurrence of South African opinion, certain general principles in order that continuity of administration may exist, and in order that, above all, uncertainty may be avoided. By introducing this Schedule we at any rate obtain a certain uniform and agreed standard of administration. What weighs with me as much as anything is that the natives themselves are not anxious to be transferred, but, admitting that they may be some day transferred, actively desire the incorporation of a charter such as this in the Act itself. To me those reasons seem conclusive for the existence of this somewhat unusual form of provision in the form of a Schedule.



## APPENDIX IV

### South Africa Act, 1909

#### Section 151, and Schedule

151. The King, with the advice of the Privy Council, may, on addresses from the Houses of Parliament of the Union, transfer to the Union the government of any territories, other than the territories administered by the British South Africa Company, belonging to or under the protection of His Majesty, and inhabited wholly or in part by natives, and upon such transfer the Governor-General in Council may undertake the government of such territory upon the terms and conditions embodied in the Schedule to this Act.

#### *Schedule*

1. After the transfer of the government of any territory belonging to or under the protection of His Majesty, the Governor-General in Council shall be the legislative authority, and may by proclamation make laws for the peace, order and good government of such territory: Provided that all such laws shall be laid before both Houses of Parliament within seven days after the issue of the proclamation or, if Parliament be not then sitting, within seven days after the beginning of the next session, and shall be effectual unless and until both Houses of Parliament shall by resolutions passed in the same session request the Governor-General in Council to repeal the same, in which case they shall be repealed by proclamation.

2. The Prime Minister shall be charged with the administration of any territory thus transferred, and he shall be advised in the general conduct of such administration by a commission consisting of not fewer than three members with a secretary, to be appointed by the Governor-General in Council, who shall take the instructions of the Prime Minister in conducting all correspondence relating to the territories, and shall also under the like control have custody of all official papers relating to the territories.

3. The members of the commission shall be appointed by the Governor-General in Council, and shall be entitled to hold office for a period of ten years, but such period may be extended to successive further terms of five years. They shall each be entitled to a fixed annual salary, which shall not be reduced during the continuance of their term of office, and they shall not be removed from office except upon addresses from both Houses of Parliament passed in the same session praying for such removal. They shall not be qualified to become, or to be, members of either House of Parliament. One of the members of the commission shall be appointed by the Governor-General in Council as vice-chairman thereof. In case of the absence, illness, or other incapacity of any member of the commission, the Governor-General in Council may appoint some other fit and proper person to act during such absence, illness, or other incapacity.

4. It shall be the duty of the members of the commission to advise the Prime Minister upon all matters relating to the general conduct of the administration of, or the legislation for, the said territories. The Prime Minister, or another minister of State nominated by the Prime Minister to be his deputy for a fixed period, or, failing such nomination, the vice-chairman, shall preside at all meetings of the commission, and in case of an equality of votes shall have a casting vote. Two members of the commission shall form a quorum. In case the commission shall consist of four or more members, three of them shall form a quorum.

5. Any member of the commission who dissents from the decision of a majority shall be entitled to have the reasons for his dissent recorded in the minutes of the commission.

6. The members of the commission shall have access to all official papers concerning the territories, and they may deliberate on any matter relating thereto and tender their advice thereon to the Prime Minister.

7. Before coming to a decision on any matter relating either to the administration, other than routine, of the territories or to legislation therefor, the Prime Minister shall cause the papers relating to such matter to be deposited with the secretary to the commission, and shall convene a meeting of the commission for the purpose of obtaining its opinion on such matter.

8. Where it appears to the Prime Minister that the despatch of any communication or the making of any order is urgently required, the communication may be sent or order made, although it has not been submitted to a meeting of the commission or deposited for the perusal of the members thereof. In any such case the Prime Minister shall record the reasons for sending the communication or making the order and give notice thereof to every member.

9. If the Prime Minister does not accept a recommendation of the commission or proposes to take some action contrary to their advice, he shall state his views to the commission, who shall be at liberty to place on record the reasons in support of their recommendation or advice. This record shall be laid by the Prime Minister before the Governor-General in Council, whose decision in the matter shall be final.

10. When the recommendations of the commission have not been accepted by the Governor-General in Council, or action not in accordance with their advice has been taken by the Governor-General in Council, the Prime Minister, if thereto requested by the commission, shall lay the record of their dissent from the decision or action taken and of the reasons therefor before both Houses of Parliament, unless in any case the Governor-General in Council shall transmit to the commission a minute recording his opinion that the publication of such record and reasons would be gravely detrimental to the public interest.

11. The Governor-General in Council shall appoint a resident commissioner for each territory, who shall, in addition to such other duties as shall be imposed on him, prepare the annual estimates of revenue and expenditure for such territory, and forward the same to the secretary to the commission for the consideration of the commission and of the Prime Minister. A proclamation shall be issued by the Governor-General in Council, giving to the provisions for revenue and expenditure made in the estimates as finally approved by the Governor-General in Council the force of law.

12. There shall be paid into the Treasury of the Union all duties of customs levied on dutiable articles imported into and consumed in the territories, and there shall be paid out of the Treasury annually towards the cost of administration of each territory a sum in respect of such duties which shall bear to the total customs revenue of the Union in respect of each financial year the same proportion as the average amount of the customs revenue of such territory for the three completed financial years last preceding the taking effect of this Act bore to the average amount of the whole customs revenue for all the Colonies and territories included in the Union received during the same period.

13. If the revenue of any territory for any financial year shall be insufficient to meet the expenditure thereof, any amount required to make good the deficiency may, with the approval of the Governor-General in Council, and on such terms and conditions and in such manner as with the like approval may be directed or prescribed, be advanced from the funds of any other territory. In default of any such arrangement, the amount



required to make good any such deficiency shall be advanced by the Government of the Union. In case there shall be a surplus for any territory, such surplus shall in the first instance be devoted to the repayment of any sums previously advanced by any other territory or by the Union Government to make good any deficiency in the revenue of such territory.

14. It shall not be lawful to alienate any land in Basutoland or any land forming part of the native reserves in the Bechuanaland protectorate and Swaziland from the native tribes inhabiting those territories.

15. The sale of intoxicating liquor to natives shall be prohibited in the territories, and no provision giving facilities for introducing, obtaining, or possessing such liquor in any part of the territories less stringent than those existing at the time of transfer shall be allowed.

16. The custom, where it exists, of holding pitsos or other recognised forms of native assembly shall be maintained in the territories.

17. No differential duties or imposts on the produce of the territories shall be levied. The laws of the Union relating to customs and excise shall be made to apply to the territories.

18. There shall be free intercourse for the inhabitants of the territories with the rest of South Africa subject to the laws, including the pass laws, of the Union.

19. Subject to the provisions of this Schedule, all revenues derived from any territory shall be expended for and on behalf of such territory. Provided that the Governor-General in Council may make special provision for the appropriation of a portion of such revenue as a contribution towards the cost of defence and other services performed by the Union for the benefit of the whole of South Africa, so, however, that that contribution shall not bear a higher proportion to the total cost of such services than that which the amount payable under paragraph 12 of this Schedule from the Treasury of the Union towards the cost of the administration of the territory bears to the total customs revenue of the Union on the average of the three years immediately preceding the year for which the contribution is made.

20. The King may disallow any law made by the Governor-General in Council by proclamation for any territory within one year from the date of the proclamation, and such disallowance on being made known by the Governor-General by proclamation shall annul the law from the day when the disallowance is so made known.

21. The members of the commission shall be entitled to such pensions or superannuation allowances as the Governor-General in Council shall by proclamation provide, and the salaries and pensions of such members and all other expenses of the commission shall be borne by the territories in the proportion of their respective revenues.

22. The rights as existing at the date of transfer of officers of the public service employed in any territory shall remain in force.

23. Where any appeal may by law be made to the King in Council from any court of the territories, such appeal shall, subject to the provisions of this Act, be made to the Appellate Division of the Supreme Court of South Africa.

24. The Commission shall prepare an annual report on the territories, which shall, when approved by the Governor-General in Council, be laid before both Houses of Parliament.

25. All bills to amend or alter the provisions of this Schedule shall be reserved for the signification of His Majesty's pleasure.

\* \* \*

## Comparative version of Section 151 and Schedule of the South Africa Act, showing the differences between the draft approved by the National Convention and the statute enacted by the United Kingdom Parliament

(Additions are shown in italics, deletions in barred type.)

The King, with the advice of the Privy Council, may, on addresses from the Houses of Parliament of the Union, transfer to the Union the government of any territories, other than the territories administered by the British South Africa Company, belonging to or under the protection of His Majesty, and inhabited wholly or in part by natives, and upon such transfer the Governor-General in Council may undertake the government of such territory upon the terms and conditions embodied in the Schedule to this Act.

### Schedule

1. After the transfer of the government of any territory belonging to or under the protection of His Majesty, the Governor-General in Council shall be the legislative authority, and may by proclamation make laws for the peace, order and good government of such territory: Provided that all such laws shall be laid before both Houses of Parliament within seven days after the issue of the proclamation or, if Parliament be not then sitting, within seven days after the beginning of the next session, and shall be effectual unless and until both Houses of Parliament shall by resolutions *passed in the same session* request the Governor-General in Council to repeal the same, in which case they shall be repealed by proclamation.

2. The Prime Minister shall be charged with the administration of any territory thus transferred, and he shall be advised in the *general conduct* of such administration by a commission consisting of not fewer than three members with a secretary, to be appointed by the Governor-General in Council, *who shall take the instructions of the Prime Minister in conducting all correspondence relating to the territories, and shall also under the like control have custody of all official papers relating to the territories.*

3. The members of the commission shall be appointed by the Governor-General in Council, and shall be entitled to hold office for a period of ten years, but such period may be extended to successive further terms of five years. They shall each be entitled to a fixed annual salary, which shall not be reduced during the continuance of their term of office, and they shall not be removed from office except upon addresses from both Houses of Parliament *passed in the same session praying for such removal.* They shall not be *eligible qualified* to become, *or to be,* members of either House of Parliament. One of the members of the commission shall be appointed by the Governor-General in Council as vice-chairman thereof. In case of the absence, illness, or other incapacity of any member of the commission, the Governor-General in Council may appoint some other fit and proper person to act during such absence, illness, or other incapacity.

4. It shall be the duty of the members of the commission to advise the Prime Minister upon all matters relating to the general conduct of the administration of, or the legislation for, the said territories. The Prime Minister, or another Minister of State *nominated by the Prime Minister to be* as his deputy *for a fixed period,* or, failing ~~them~~ *such nomination,* the vice-chairman, shall preside at all meetings of the commission, and in case of



required to make good any such deficiency shall be advanced by the Government of the Union. In case there shall be a surplus for any territory, such surplus shall in the first instance be devoted to the repayment of any sums previously advanced by any other territory or by the Union Government to make good any deficiency in the revenue of such territory.

14. It shall not be lawful to alienate any land in Basutoland or any land forming part of the native reserves in the Bechuanaland protectorate and Swaziland from the native tribes inhabiting those territories.

15. The sale of intoxicating liquor to natives shall be prohibited in the territories, and no provision giving facilities for introducing, obtaining, or possessing such liquor in any part of the territories less stringent than those existing at the time of transfer shall be allowed.

16. The custom, where it exists, of holding pitsos or other recognised forms of native assembly shall be maintained in the territories.

17. No differential duties or imposts on the produce of the territories shall be levied. The laws of the Union relating to customs and excise shall be made to apply to the territories.

18. There shall be free intercourse for the inhabitants of the territories with the rest of South Africa subject to the laws, including the pass laws, of the Union.

19. Subject to the provisions of this Schedule, all revenues derived from any territory shall be expended for and on behalf of such territory. Provided that the Governor-General in Council may make special provision for the appropriation of a portion of such revenue as a contribution towards the cost of defence and other services performed by the Union for the benefit of the whole of South Africa, so, however, that that contribution shall not bear a higher proportion to the total cost of such services than that which the amount payable under paragraph 12 of this Schedule from the Treasury of the Union towards the cost of the administration of the territory bears to the total customs revenue of the Union on the average of the three years immediately preceding the year for which the contribution is made.

20. The King may disallow any law made by the Governor-General in Council by proclamation for any territory within one year from the date of the proclamation, and such disallowance on being made known by the Governor-General by proclamation shall annul the law from the day when the disallowance is so made known.

21. The members of the commission shall be entitled to such pensions or superannuation allowances as the Governor-General in Council shall by proclamation provide, and the salaries and pensions of such members and all other expenses of the commission shall be borne by the territories in the proportion of their respective revenues.

22. The rights as existing at the date of transfer of officers of the public service employed in any territory shall remain in force.

23. Where any appeal may by law be made to the King in Council from any court of the territories, such appeal shall, subject to the provisions of this Act, be made to the Appellate Division of the Supreme Court of South Africa.

24. The Commission shall prepare an annual report on the territories, which shall, when approved by the Governor-General in Council, be laid before both Houses of Parliament.

25. All bills to amend or alter the provisions of this Schedule shall be reserved for the signification of His Majesty's pleasure.

\* \* \*

## APPENDIX V

### Comparative version of Section 151 and Schedule of the South Africa Act, showing the differences between the draft approved by the National Convention and the statute enacted by the United Kingdom Parliament

(Additions are shown in italics, deletions in barred type.)

The King, with the advice of the Privy Council, may, on addresses from the Houses of Parliament of the Union, transfer to the Union the government of any territories, other than the territories administered by the British South Africa Company, belonging to or under the protection of His Majesty, and inhabited wholly or in part by natives, and upon such transfer the Governor-General in Council may undertake the government of such territory upon the terms and conditions embodied in the Schedule to this Act.

#### Schedule

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2. The Prime Minister shall be charged with the administration of any territory thus transferred, and he shall be advised in the *general conduct* of such administration by a commission consisting of not fewer than three members with a secretary, to be appointed by the Governor-General in Council, *who shall take the instructions of the Prime Minister in conducting all correspondence relating to the territories, and shall also under the like control have custody of all official papers relating to the territories.*

3. The members of the commission shall be appointed by the Governor-General in Council, and shall be entitled to hold office for a period of ten years, but such period may be extended to successive further terms of five years. They shall each be entitled to a fixed annual salary, which shall not be reduced during the continuance of their term of office, and they shall not be removed from office except upon addresses from both Houses of Parliament *passed in the same session praying for such removal.* They shall not be ~~eligible~~ *qualified* to become, *or to be,* members of either House of Parliament. One of the members of the commission shall be appointed by the Governor-General in Council as vice-chairman thereof. In case of the absence, illness, or other incapacity of any member of the commission, the Governor-General in Council may appoint some other fit and proper person to act during such absence, illness, or other incapacity.

4. It shall be the duty of the members of the commission to advise the Prime Minister upon all matters relating to the general conduct of the administration of, or the legislation for, the said territories. The Prime Minister, or another Minister of State *nominated by the Prime Minister to be* ~~as~~ *his deputy for a fixed period,* or, failing ~~them~~ *such nomination,* the vice-chairman, shall preside at all meetings of the commission, and in case of



an equality of votes shall have a casting vote. Two members of the commission shall ~~with the Prime Minister or his Deputy~~ form a quorum. In case the commission shall consist of four or more members, three of them ~~with the Prime Minister or his Deputy~~ shall form a quorum.

5. Any member of the commission who dissents from the decision of a majority shall be entitled to have the reasons for his dissent recorded in the minutes of the commission.

6. The members of the commission shall have access to all official papers concerning the territories, and they may deliberate on any matter relating thereto and tender their advice thereon to the Prime Minister.

7. Before coming to a decision on any matter relating either to the administration, other than routine, of the territories or to legislation therefor, the Prime Minister shall cause the papers relating to such matter to be deposited with the secretary to the commission, and shall convene a meeting of the commission for the purpose of obtaining its opinion on such matter.

8. Where it appears to the Prime Minister that the despatch of any communication or the making of any order is urgently required, the communication may be sent or order made, although it has not been submitted to a meeting of the commission or deposited for the perusal of the members thereof. In any such case the Prime Minister shall record the reasons for sending the communication or making the order and give notice thereof to every member.

9. If the Prime Minister does not accept a recommendation of the commission or proposes to take some action contrary to their advice, he shall state his views to the commission, who shall be at liberty to place on record the reasons in support of their recommendation or advice. This record shall be laid by the Prime Minister before the Governor-General in Council, whose decision in the matter shall be final.

10. When the recommendations of the commission have not been accepted by the Governor-General in Council, or action not in accordance with their advice has been taken by the Governor-General in Council, the Prime Minister, if thereto requested by the commission, shall lay the record of their dissent from the decision or action taken and of the reasons therefor before both Houses of Parliament, unless in any case the Governor-General in Council shall ~~be of~~ *transmit to the commission a minute recording his opinion that the publication of such record and reasons would be gravely detrimental to the public interest.*

11. The Governor-General in Council shall appoint a resident commissioner for each territory, who shall, in addition to such other duties as shall be imposed on him ~~by the Governor-General in Council~~, prepare the annual estimates of revenue and expenditure for such territory, and forward the same to the Prime Minister. ~~After such estimates have been submitted to the Commission and approved of or amended by the Prime Minister, the Resident Commissioner shall, subject to Regulations to be framed in that behalf by the Governor-General in Council act in accordance with such estimates. Secretary to the Commission for the consideration of the commission and of the Prime Minister. A proclamation shall be issued by the Governor-General in Council, giving to the provisions for revenue and expenditure made in the estimates as finally approved by the Governor-General in Council the force of law.~~

12. There shall be paid into the Treasury of the Union all duties of customs levied on dutiable articles imported into and consumed in the territories, and there shall be paid out of the Treasury annually towards the cost of

administration of each territory a sum in respect of such duties which shall bear to the total customs revenue of the Union in respect of each financial year the same proportion as the average amount of the customs revenue of such territory for the three completed financial years last preceding the taking effect of this Act bore to the average amount of the whole customs revenue for all the Colonies and territories included in the Union received during the same period.

13. ~~If in case~~ the revenue of any territory for any financial year shall be insufficient to meet the expenditure thereof, any amount required to make good the deficiency ~~shall be advanced by the Government of the Union may, with the approval of the Governor-General in Council, and on such terms and conditions and in such manner as with the like approval may be directed or prescribed, be advanced from the funds of any other territory. In default of any such arrangement, the amount required to make good any such deficiency shall be advanced by the Government of the Union.~~ In case there shall be a surplus for any territory, such surplus shall in the first instance be devoted to the repayment of any sums previously advanced by any other territory or by the Union Government to make good any deficiency in the revenue of such territory ~~and thereafter it shall be lawful for the Governor-General in Council to lend the whole or any part of such surplus to another Territory.~~

14. It shall not be lawful to alienate any land in Basutoland or any land forming part of the native reserves in the Bechuanaland protectorate and Swaziland from the native tribes inhabiting those territories.

15. The sale of *intoxicating* liquor to natives shall be prohibited in the territories, *and no provision giving facilities for introducing, obtaining, or possessing such liquor in any part of the territories less stringent than those existing at the time of transfer shall be allowed.*

16. The custom, where it exists, of holding pitsos or other recognised forms of native assembly shall be maintained in the territories.

17. No differential duties or imposts on the produce of the territories shall be levied. The laws of the Union relating to customs and excise shall be made to apply to the territories.

18. There shall be free intercourse for the inhabitants of the territories with the rest of South African subject to the laws, including the pass laws, of the Union.

19. Subject to the provisions of this Schedule, all revenues derived from any territory shall be expended for and on behalf of such territory: Provided that the Governor-General in Council may make special provision for the appropriation of a portion of such revenue as a contribution towards the cost of defence and other services performed by the Union for the benefit of the whole of South Africa, *so, however, that that contribution shall not bear a higher proportion to the total cost of such services than that which the amount payable under paragraph 12 of this Schedule from the Treasury of the Union towards the cost of the administration of the territory bears to the total customs revenue of the Union on the average of the three years immediately preceding the year for which the contribution is made.*

20. The King may disallow any law made by the Governor-General in Council by proclamation for any territory within one year from the date of the proclamation, and such disallowance on being made known by the Governor-General by proclamation shall annul the law from the day when the disallowance is so made known.



21. The members of the commission shall be entitled to such pensions or superannuation allowances as the Governor-General in Council shall by proclamation provide, and the salaries and pensions of such members and all other expenses of the commission shall be borne by the territories in the proportion of their respective revenues.

22. The rights as existing on the 16th December, 1908 of Civil Servants at the date of transfer of officers of the public service employed in any territory shall remain in force.

23. Where any appeal may by law be made to the King in Council from any court of the territories, such appeal shall, subject to the provisions of this Act, be made to the Appellate Division of the Supreme Court of South Africa.

24. The Governor-General in Council Commission shall prepare an annual report on the territories, which shall, when approved by the Governor-General in Council and lay the same, be laid before both Houses of Parliament.

25. All bills to amend or alter the provisions of this Schedule shall be reserved for the signification of His Majesty's pleasure.

## APPENDIX VI

### Statement made by the Secretary of State (the Duke of Devonshire) to a Deputation of Swazi Chiefs on 31st January, 1923

Paramount Chief and Chiefs,

There is another matter about which I wish to speak to you, namely, the question of the transfer of the Government of Swaziland to the Government of the Union of South Africa. In his reply to your Petition of 1919 the High Commissioner, Lord Buxton, informed you that in the event of the question being considered, you would be permitted to send a Deputation to England, if you should then wish to do so.

Before you left South Africa you expressed the desire that you should be allowed to refer to the question when in London, and His Majesty's Government agreed to your doing so, on the understanding that the present Deputation was to be regarded as the deputation for which permission was promised by Lord Buxton.

This arrangement was intended not only to give you an opportunity of expressing your views personally to the Secretary of State for the Colonies, but also to avoid the further expense to the Swazi people which a second Deputation would involve. You did not refer in your Petition to the King to the question of the transfer of the Government of the Territory, and the written statement which I understood you wished to submit on this question has not been received.

I am unable to say when the Union Government will approach His Majesty's Government with regard to taking over the Government of the Territory, but they have had the question under consideration for some time and I therefore think it desirable that I should say something now to you on the subject.

You are doubtless fully aware of the safeguards provided in the schedule to the South Africa Act. In my opinion and in the opinion of His Majesty's Government those safeguards are adequate for the protection of the rights which the native population of Swaziland enjoys under the direct administration of the Crown and you need have no apprehension that the transfer of the Government of the territory to the Union, if and when approved by His Majesty the King, would affect your legitimate interests prejudicially. In saying this I have not overlooked a statement made in 1921 in the House of Assembly at Cape Town, by the Prime Minister of the Union of South Africa, in which he intimated that in the event of the transfer of the Government of Swaziland to the Union provision would have to be made by legislation for the representation in the Union Parliament of the European population of the territory. You may perhaps have thought that in such legislation might be involved some interference with the safeguards provided in the Schedule to the South Africa Act for the protection of native rights and interests, but you may rest assured that the protection of native rights and interests would not be taken away or diminished by any legislation which might be passed to enable the European residents to participate in the election of members of the Union Parliament. I would remind you that when the South Africa Bill was before the House of Commons in 1909 a pledge was given by His Majesty's Government that before the Government of any of the three territories administered by the High Commissioner was transferred



to the Union the fullest opportunity would be given to the House of Commons of considering the matter. That pledge still holds good. I need hardly say that His Majesty's Government would not support in the House of Commons or elsewhere any proposal for transfer if it involved the impairment of such safeguards for native rights and interests as the Schedule to the South Africa Act was designed to secure. Nor is there any reason to suppose that the Union Government of South Africa would wish those safeguards to be impaired.

You will recollect of course that one of those safeguards in the event of transfer is the provision for the appointment of a Commission to advise the Prime Minister of the Union of South Africa and through him the Governor-General in Council upon all matters relating to the general conduct of the administration of or the legislation for the transferred territory or territories. That you rightly attach great importance to this provision I am confident. Great importance is also attached to the principle of a Commission by the Union Government of South Africa. Indeed it has of its own accord already adopted the principle for application to the administration of native affairs within the Union. Provision also exists in the South Africa Act for the continued recognition of your National Council and representations by that Council would receive the consideration of the Union Government through the local officer in charge who would report to the Commission. The Native Affairs Commission for the Union, which as you know has been established by an Act of the Union Parliament, has not yet been very long in existence but I have reason to believe that it has done excellent work for the natives of the Union even during that relatively short period and that its advice carries very great weight with the Union Government and Parliament. This circumstance if fairly and reasonably considered ought to go far towards reassuring you that the rights and interests of the natives of Swaziland would be protected as adequately under the Union Government of South Africa as they are now.

As to the procedure which you should adopt if and when the question of the transfer of the Government to the Government of the Union of South Africa is definitely raised, you will be at liberty to make your representations to the High Commissioner through the Resident Commissioner and if you should wish personally to see the High Commissioner on the subject, I have no doubt that there will be no difficulty on the part of the High Commissioner in meeting your wishes. Anything you may say to the Resident Commissioner or to the High Commissioner will naturally be submitted to His Majesty's Government and will receive the same careful consideration as if it had been said to me personally. But I can hold out no hope that a second deputation to England will be allowed.

DEVONSHIRE,

*His Majesty's Principal Secretary of  
State for the Colonies.*

## APPENDIX VII

### Correspondence with the Government of Southern Rhodesia

#### Despatch from the Governor of Southern Rhodesia to the Secretary of State

Governor's Office,

Salisbury (Rhodesia).

17th October, 1924.

Sir,

I have the honour to refer to Sir Drummond Chaplin's despatch No. 234 of the 25th May, 1921, addressed to the High Commissioner, a copy of which was forwarded to the Secretary of State for the Colonies, regarding the proposed incorporation of the Tati Territory in Southern Rhodesia.

2. On the 18th May, 1921, the Legislative Council of Southern Rhodesia adopted the following Resolution:—

"That the Administration approach the Colonial Office and the inhabitants of the Tati district with a view to arranging for the immediate incorporation of the country known as the Tati Territory with Southern Rhodesia";

but no action was taken in the matter, probably in view of the changes at that time pending in the constitutional position of Southern Rhodesia.

3. I am desired by my Ministers to make representations to His Majesty's Government with a view to the above resolution being put into effect. A copy of a Minute dated 16th October, which they addressed to me on the subject is enclosed.

4. My Ministers inform me that the European settlers residing in the Tati Concession are anxious that that territory should be incorporated in Southern Rhodesia: I enclose copy of a letter dated 25th August, 1924, addressed to the Premier by the Tati Farmers' Association on the subject.

5. During his recent visit to South Africa the Secretary of State for the Colonies granted an interview to a deputation of European settlers from the Tati Territory, who presented a petition requesting that they might be removed from the jurisdiction of the Bechuanaland Protectorate administration and incorporated in Southern Rhodesia; and I understand that their petition was favourably received.

6. From its geographical position and for economic reasons the inclusion of the Tati Territory in Southern Rhodesia would appear to be a convenient arrangement. I accordingly submit the request of my Ministers for your favourable consideration.

I have, etc.

J. R. CHANCELLOR,

Governor.



**Despatch from the Secretary of State to the Governor of Southern Rhodesia**

Downing Street,  
11th March, 1925.

Sir,

I have the honour to acknowledge the receipt of your despatches No. 330 of the 17th October and No. 33 of the 2nd February, on the subject of the proposal that the Tati district should be incorporated in Southern Rhodesia.

2. I should be glad if you would inform your Ministers that the proposal has received careful consideration, but that it is one which gives rise to considerable difficulty and I should be glad if it were not pressed at present. I am asking the High Commissioner for South Africa to explain in reply to the Resolutions which were passed at the public meetings in the Tati District last January that the terms of the Resolutions have been noted and will be kept in mind but that His Majesty's Government do not feel able in existing circumstances to take any immediate action in the matter.

I have, etc.,

L. S. AMERY.

\* \* \*

**Despatch from the Governor of Southern Rhodesia to the Secretary of State**  
(No. 87)

Salisbury, Southern Rhodesia,  
27th March, 1935.

Sir,

I have the honour to transmit to you the enclosed copy of a minute in which my Ministers refer to the apprehension felt in this Colony lest the administration of the Bechuanaland Protectorate should be transferred to His Majesty's Government in the Union of South Africa, and ask me to notify to you the willingness of the Government of Southern Rhodesia to undertake the administration of that Territory (or, at the least, of the northern portion of it) subject to Constitutional safeguards for the complete absence of any Customs barriers or fiscal differentiation between the Colony, and the territory so transferred, and for the protection of the Reserves and the interests of the natives who would be affected by such transfer.

2. I have the honour to submit this notification to you.

I have, &c.,

H. J. STANLEY,

Governor.

Minute

26th March, 1935

In view of Press reports that a claim is now being made to His Majesty's Government in the Union of South Africa for the Administration of the High Commission Territories in South Africa to be transferred to their control, and the apprehension which is felt in this Colony lest their request should be acceded to in respect of the Bechuanaland Protectorate, Ministers have the honour to submit that His Excellency the Governor may be pleased to notify the Secretary of State that this Government is willing to undertake the administration of the Bechuanaland Protectorate.

Should the Secretary of State consider it inexpedient to transfer the administration of the entire Protectorate to this Government, Ministers would urge the transfer to the Colony of Southern Rhodesia of the administration of at least that portion of the Protectorate lying north of a line running from the Limpopo along the northern boundary of the Bakgatla Reserve and the southern boundary of the Bamangwato Reserve westward to the north-west corner of the Bakwena Reserve and thence along the former common boundary of the Northern and Southern Protectorates to the eastern border of South-West Africa.

Ministers beg to inform His Excellency, that should the Secretary of State agree to the transfer of the whole or part of the Bechuanaland Protectorate to this Colony, they would agree to the amendment of "The Southern Rhodesia Constitution Letters Patent, 1923", in such a way as to guarantee complete absence of Customs barriers or fiscal differentiation between the territory so transferred and this Colony, and they would further agree to any restrictions on the legislative or executive powers of this Government over the territory so transferred which the Secretary of State might think desirable for the protection of the Native Reserves and the interests of the native inhabitants of that territory.

G. MARTIN HUGGINS.

\* \* \*

**Despatch from the Secretary of State to the Governor of Southern Rhodesia**  
(No. 180)

Downing Street, S.W.1.  
6th June, 1935.

Sir,

I have the honour to acknowledge the receipt of your despatch No. 87 of the 27th March, forwarding a copy of a Minute from your Ministers notifying the willingness of the Government of Southern Rhodesia to undertake the administration of the Bechuanaland Protectorate (or at least of the northern part of it) and indicating their readiness to agree to certain constitutional safeguards in connexion with such transfer.

2. I have noted with interest the views expressed in the minute enclosed in your despatch. Your Ministers will, however, appreciate the position of the Union of South Africa in the matter, particularly in view of the terms of Section 151 of the South Africa Act of 1909, and I enclose for their information an extract from the report of the debates in the House of Commons on the 23rd May, containing statements which I made regarding the discussions which I have recently held with the Prime Minister of the Union of South Africa on the subject of the future of the High Commission Territories. Your Ministers may be assured that their views will not be overlooked in connexion with future developments as to the position of the Bechuanaland Protectorate.

I have, &c.,

J. H. THOMAS.

\* \* \*



## APPENDIX VIII

### The Statute of Westminster, 1931

[22 Geo. 5. Ch. 4]

#### Sections 1 to 4

\* \* \* \* \*

1. In this Act the expression "Dominion" means any of the following Dominions, that is to say, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland.

2.—(1) The Colonial Laws Validity Act, 1865, shall not apply to any law made after the commencement of this Act by the Parliament of a Dominion.

(2) No law and no provision of any law made after the commencement of this Act by the Parliament of a Dominion shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Parliament of a Dominion shall include the power to repeal or amend any such Act, order, rule or regulation in so far as the same is part of the law of the Dominion.

3. It is hereby declared and enacted that the Parliament of a Dominion has full power to make laws having extra-territorial operation.

4. No Act of Parliament of the United Kingdom passed after the commencement of this Act shall extend, or be deemed to extend, to a Dominion as part of the law of that Dominion, unless it is expressly declared in that Act that that Dominion has requested, and consented to, the enactment thereof.

\* \* \* \* \*

## APPENDIX IX

### Report of the Parliamentary Committee\* (Chairman, Lord Selborne) which studied the position of the High Commission Territories in 1934

THE Parliamentary Committee has given some preliminary consideration to the problem involved in the proposed early transfer to the Union of South Africa of the South African Protectorates, of Basutoland, or of Swaziland, or of Bechuanaland. Pending a detailed statement of the point of view of the Government of the Union of South Africa it is unable to arrive at any conclusions upon the subject. It considers, however, that it may contribute to a satisfactory solution if it issues the following statement as to the constitutional position as it sees it.

The preamble to the South African Act, 1909, states that:

"Whereas it is desirable for the welfare and future progress of South Africa that the several British Colonies therein should be united under one Government in a legislative union under the Crown of Great Britain and Ireland.

And whereas it is expedient to provide for the eventual admission into the Union or transfer to the Union of such parts of South Africa as are not originally included therein."

Section 151 of that Act reads as follows:

"The King, with the advice of the Privy Council, may, on addresses from the Houses of Parliament of the Union, transfer to the Union the Government of any territories, other than the territories administered by the British South Africa Company, belonging to or under the protection of His Majesty and inhabited wholly or in part by natives, and upon such transfer the Governor-General in Council may undertake the Government of such territory upon the terms and conditions embodied in the Schedule to this Act."

These extracts make it plain that at the time of the passage of the Act it was contemplated that eventually the responsibility for the Government of Basutoland, or of Bechuanaland, or of Swaziland might be transferred from H.M.G. in Great Britain to H.M.G. in South Africa. It is important, however, to note carefully the circumstances under which such an eventual transfer was contemplated.

In the first place the transfer is to be to a South African Union under the Crown.

In the second place the time and circumstances of transfer are to be a matter of arrangement between H.M.G. in South Africa and H.M.G. in Great Britain. Each Government has its own responsibility and authority in the matter. This is the case with the South African Government because the matter can only be set in motion by addresses to the Crown from the Houses of Parliament of the Union of South Africa, advised thereto, of course, by the South African Government of the day. But the King cannot accede to the request for transfer except on the advice of the Privy Council at Westminster, that is, except on the advice of his British Ministers; and they of course cannot give that advice unless they are assured of the approval

\* The Members of the Committee, who were drawn from both Houses of Parliament, and from all the major parties, were: Lord Selborne (Chairman), Lord Lothian, Lord Balfour, Lord Buxton, Lord Lloyd, Lord Lugard, Lord Winterton, Mr. L. S. Amery, Captain V. A. Cazalet, Mr. W. Lunn, Mr. P. Emrys Evans, Sir Edward Grigg, Sir P. Hamilton, Mr. Lennox Boyd, Mr. Mallalieu, Mr. W. McLean, Mr. A. A. Somerville, Sir A. Steel-Maitland, Mr. F. Storey, Colonel J. C. Wedgewood.



and support of Parliament. That is clearly how H.M. present Government at Westminster interpret the Act for it has been stated\* publicly that the assent of Parliament will be necessary to transfer, which means that the definite approval of the House of Commons must be secured.

The Schedule to the South Africa Act, 1909, in twenty-five Articles, laid down the conditions under which any territory transferred under the terms of Section 151 should be governed after transfer. These conditions are very important. Briefly they may be summarized as follows.

The legislative authority for the Protectorates was to be the Governor-General in Council and not the Union Parliament.

The Prime Minister of the Union was charged with the responsibility of administration, advised by a Statutory Commission with an independent status, and governing through Resident Commissioners.

It was made illegal to alienate any land in Basutoland, or any land forming part of the native reserves in Bechuanaland or Swaziland, from the native tribes inhabiting those territories.

The sale of intoxicating liquor to natives was to be prohibited.

The existing native assemblies were to be maintained.

No differential duties or imports were to be levied on the produce of the territories, to which the laws of the Union relating to customs and excise were to be applied.

There was to be free intercourse for the inhabitants of the territories with the rest of South Africa subject to the laws, including the pass laws, of the Union.

All revenues derived from the territories were to be expended for and on behalf of these territories.

In addition to these conditions, which laid down the essential principles of Government which were to be given effect to after transfer had taken place, there were two other Articles, 20 and 25, to which attention should be directed.

#### Article 20:

"The King may disallow any law made by the Governor-General in Council by proclamation for any territory within one year from the date of the proclamation, and such disallowance on being made known by the Governor-General by proclamation shall annul the law from the day when the disallowance is so made known."

#### Article 25:

"All Bills to amend or alter the provisions of this Schedule shall be reserved for the signification of His Majesty's pleasure."

The obvious intention of these two Articles was to give H.M.G. in Westminster a constitutional opportunity for a friendly exchange of views with H.M.G. in South Africa in respect of the territories after transfer had taken place.

Finally there were certain clauses in the body of the South Africa Act, 1909, dealing with questions affecting natives living in the Union.

\* The Secretary of State for Dominion Affairs, House of Commons, 30th April, 1934.

Section 24 of the South Africa Act, 1909, provides for the inclusion in the Senate of four Senators

"selected on the ground mainly of their thorough acquaintance, by reason of their official experience or otherwise, with the reasonable wants and wishes of the coloured races in South Africa."

Section 35 enacts a special parliamentary process by which alone natives in the province of the Cape of Good Hope can be disqualified for the franchise. Section 147 deals with the administration of native affairs within the Union. Sections 64, 65 and 66 make provision for the reservation of Bills for the signification of the King's pleasure and for the power of the King to disallow a law. Finally, Section 152 gave full power to the Parliament of the Union of South Africa (with certain stipulations for a special procedure in certain cases) to make laws repealing or altering any of the provisions of the South Africa Act, 1909. The object of these careful provisions for reservation and disallowance was clearly to give H.M.G. at Westminster a status for friendly discussions and negotiations with H.M.G. in South Africa, if any amendment of the South Africa Act, 1909, was proposed, on which H.M.G. at Westminster wished to be heard, and there can be no doubt that all educated natives and their European advisers have attached great importance to these provisions.

The enactment of the Statute of Westminster and of the South African Status Act, 1934, have had a profound effect on all these provisions. Their effect has been to repeal all those sections or Articles of the South Africa Act, 1909, which made provision for reservation to, or disallowance by, the King, advised by H.M.G. at Westminster. Henceforth the Parliament of the Union of South Africa may repeal or make any amendment it chooses of the Sections, and Articles of the Schedule, of the South Africa Act, 1909, and neither H.M.G. nor the Parliament at Westminster will have any constitutional status for expressing any opinion on the subject. But the passage of the Statute of Westminster and of the Status Act, 1934, does not alter the fact that certain basic principles for the future government of the Protectorates after transfer were agreed between the South African Convention and the British Parliament and ratified by the Parliaments of the four South African Colonies, and that the time and conditions of transfer were to be settled by agreement between H.M.G. in the Union and H.M.G. at Westminster.

The Statute of Westminster and the South African Status Act, 1934, however, will certainly be a matter of profound interest to the natives of the Protectorates, whose views have to be taken into account before transfer takes place. For the native inhabitants of the Protectorates can no longer regard the Schedule of the South Africa Act, 1909, as their safeguard. Moreover, they cannot fail to consider the attitude of the South African Government and Parliament to those Sections of the South Africa Act, 1909, which affect the natives living within the Union and which we have set forth in this Memorandum. The question which will fill the minds of the native inhabitants of the Protectorates is this:

"What is going to be the permanent and deliberately adopted policy of the Government and Parliament of the Union of South Africa towards all South African natives, whether at present living within the territories of the Union or within the territories of the Protectorates?"

Nothing else will seem as important to them as the answer to this question. At present they do not know and cannot know the answer. For this momentous problem was referred several years ago by the Parliament of South



Africa to a Select Committee, on which all parties comprised within the South African Parliament are represented, but the Committee has not yet reported.

In this connection it is important to note that H.M.G. of Great Britain have publicly\* pledged themselves not to transfer any of these territories until they have given an opportunity both to the native and European inhabitants of these territories to express their opinion on the proposed transfer. H.M.G. of Great Britain have never adopted the position that they will not transfer the territories unless the inhabitants of those territories consent to transfer, but they have definitely promised those inhabitants that they shall be heard on the subject and that any representations they may make shall be duly considered. It does not seem reasonable to ask either the native or the European inhabitants of the territories to express an opinion on the proposed transfer before the report of the Select Committee has been published or before they know the native policy which the South African Government and Parliament have adopted.

In recent discussions in South Africa on the subject of the transfer of the Protectorates the opinion has been expressed that the native territories were actually given to the Union at the time of the passing of the South Africa Act, 1909, and that, if the two Houses of the Union Parliament were to pass an address to the King in the terms of Section 151 of that Act, their transfer would, as it were, automatically take place. We suggest that this is a misreading of the Act. By the preamble and Section 151 of the South Africa Act, 1909, these native territories were not given to the Union of South Africa in 1909, but the way was prepared for an eventual transfer at a time and under circumstances to be mutually agreed between H.M. Government in South Africa and H.M. Government at Westminster.

We have set forth in a previous paragraph of this Memorandum some reasons for holding this opinion, but we are fortified in it by comparing the words of Section 151 of the South Africa Act, 1909, with the words of Section 150. As Section 151 contemplates the eventual transfer of the native Protectorates to the Union of South Africa, so Section 150 contemplates the eventual admission into the Union of the territories at that time administered by the British South Africa Company, that is, of Rhodesia. In the case of the native Protectorates certain conditions were settled beforehand between H.M.G. at Westminster and the statesmen of South Africa and were embodied in the Schedule. In the case of Rhodesia no terms or conditions were settled in advance and therefore it is provided in Section 150 that they will have to be settled when the time for admission comes between H.M.G. in South Africa and H.M.G. at Westminster. But the opening words of Section 150 are identical with those of Section 151:

“The King, with the advice of the Privy Council, may, on addresses from the Houses of Parliament of the Union, admit into the Union the territories administered by the British South Africa Company, etc.”

In fact, the form of Sections 150 and 151 are, *mutatis mutandis*, identical. It is quite clear that Rhodesia was not given to the Union at the time of the passing of the South Africa Act, 1909. Nor were the Protectorates. In both sections alike the words “with the advice of the Privy Council” provided the constitutional opportunity for the Government and Parliament of Great Britain to consult with the Government and Parliament of South Africa upon the subject.

\* The Secretary of State for Dominion Affairs, House of Commons, 30th April, 1934.

Indeed, what Mr. Asquith said when speaking as Prime Minister on the Second Reading of the South Africa Bill in the House of Commons on August 16th, 1909, is conclusive.

“As regards the Protectorates . . . we—I assert this most strongly—stand in the position of trustees with regard to these natives” (he went on in very forcible language and then continued) “but the important point is that you cannot bring any one of these Protectorates or Territories into a state of subordination to the Union Government or Parliament, as Clause 151 shows, unless the King with the advice of the Privy Council—that is of the Cabinet here—agrees. That is a most proper recognition on the part of the South African Communities that the Imperial Government has a voice, and the ultimate voice, in relation to this matter. They do not deny our right in the least; on the contrary on the very face of the Act they admit it and invite us to exercise it.”

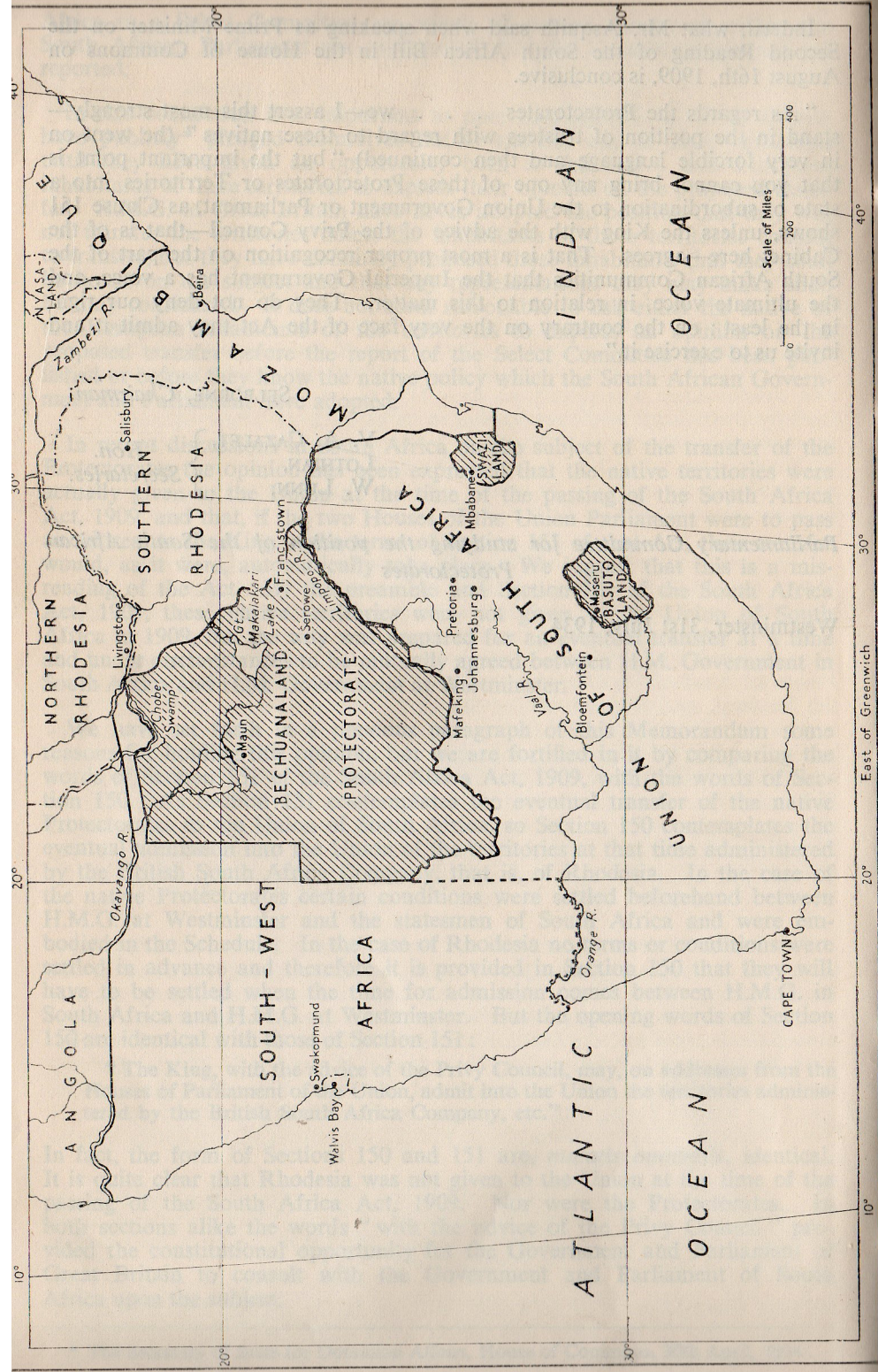
SELBORNE, *Chairman.*

V. A. CAZALET,	}	<i>Hon. Secretaries.</i>
LOTHIAN,		
W. LUNN,		

*Parliamentary Committee for studying the position of the South African Protectorates*

Westminster, 31st July, 1934.





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